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February 12, 2008

Via Hand Delivery

Hon. Jack B. Weinstein
United States District Court Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Hart v. Community School Board, 72 CV 1041

Dear Judge Weinstein:

I write on behalf of defendant/movant Joel I. Klein, Chancellor of the City School District of the City of New York (also known as the Department of Education), enclosing a courtesy copy of defendant's motion for an order terminating the 1974 remedial order in this case, dismissing the action, and for an immediate order ending the race-based admission requirement for Fall 2008 District 21 gifted and talented programs, including at Mark Twain Intermediate School (IS239). On January 14, 2008, there was another motion filed in this case, a motion to intervene by Anjan Rau and Kanchan Katapadi, as guardians and on behalf of their children. By order dated January 25, 2008, the Court set a hearing date of March 19, 2008 for the motion to intervene.

With the consent of counsel for the Hart plaintiffs and the proposed intervenors, defendant is seeking to expedite the hearing date on defendant's motion for an order terminating the 1974 remedial order, and scheduling the intervention motion for the same date. As explained in the accompanying papers, in order to make the placement for Mark Twain and other gifted and talented programs as seamless as possible for the student applicants and their families, the Department of Education must know by the end of March how the placement process will be done for the Fall 2008 school year, and whether the race-based admission requirement still applies. Defendant therefore respectfully requests that the Court set an expedited hearing date on the motions, consistent with the Court's schedule and the schedule of the parties. If the Court

wishes, I will undertake to consult the parties as to scheduling availability, and report back to the Court, and we will of course undertake to provide notice of the hearing date once it is established.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gail Rubin".

Gail Rubin

To:

James I. Meyerson
64 Fulton St., Suite 502
New York, NY 10038
212-226-3310
Attorneys for Plaintiffs

Michael E. Rosman
Center for Individual Rights
1233 Twentieth St. NW, Suite 300
Washington, DC 20036
202-833-8400
Attorneys for Proposed Intervenors

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

JEFFREY HART, et al.,

Plaintiffs,

-against-

THE COMMUNITY SCHOOL BOARD OF
BROOKLYN, NEW YORK SCHOOL DISTRICT #21, et
al.

**NOTICE OF MOTION TO
TERMINATE REMEDIAL
ORDER**

72 CV 1041 (JBW)

Defendants.

----- X

PLEASE TAKE NOTICE that upon the annexed Declarations of Gail Rubin, Sandy Ferguson, Paul Helfman, Margaret Lacey Berman and Carol Moore, the attached exhibits, and the accompanying memorandum of law, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court, located at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on a date and time to be specified by the Court, on behalf of Defendant Joel I. Klein, Chancellor of the City School District of the City of New York (also known as the Department of Education) for an Order terminating the 1974 remedial order in this case, dismissing the action, for an immediate order ending the race-based admission requirement for Fall 2008 District 21 gifted and talented programs, including at Mark

Twain Intermediate School, and for such other and further relief as the Court deems proper.

Dated: February 11, 2008
New York, New York

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant Chancellor
100 Church Street, Rm. 20-098
New York, New York 10007
(212) 788-0999

By: 

GAIL RUBIN (GR2833)
Assistant Corporation Counsel

To:

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Parents Association of Mark Twain
Mark Twain Intermediate School, Room 235
2401 Neptune Avenue
Brooklyn, NY 11224
PRO SE Intervenor

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

JEFFREY HART, et al.,

Plaintiffs,

-against-

THE COMMUNITY SCHOOL BOARD OF
BROOKLYN, NEW YORK SCHOOL DISTRICT #21, et
al.

**DECLARATION OF GAIL
RUBIN IN SUPPORT OF
MOTION TO TERMINATE
REMEDIAL ORDER**

72 CV 1041 (JBW)

Defendants.

----- X

GAIL RUBIN declares, pursuant to 28 U.S.C. § 1746 and subject to the penalty of perjury, that the following statements are true and correct:

1. I am an Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York. I make this Declaration in support of the motion by Joel I. Klein, Chancellor of the City School District of the City of New York, for an Order terminating the 1974 remedial order in this case, dismissing the action, for an immediate order ending the race-based admission requirement for Fall 2008 District 21 gifted and talented programs, including at Mark Twain Intermediate School, and for such other and further relief as the Court deems proper.

2. The Remedial Order in this case was entered over thirty-three years ago to remedy segregation at Mark Twain Intermediate School (formerly Mark Twain Junior High School) (hereinafter "Mark Twain") in Coney Island. On July 26, 1974, this Court issued a final judgment, bringing to a close "the first New York City school desegregation case to reach a federal court." Hart v. Community School Board, 383 F. Supp. 699, 706 (E.D.N.Y. 1974)

(“Hart”); Hart v. Community School Board, 383 F. Supp. 769 (E.D.N.Y. 1974) (“Remedial Order”), aff’d, 512 F.2d 37 (2d Cir. 1975).

3. As summarized by the Second Circuit, this Court held that “the School Board and the Chancellor of the Board of Education of the City of New York were liable for conducting a segregated school in violation of the Constitution.” Hart v. Community School Board, 512 F.2d at 41. The Court gave the local School Board the opportunity to submit a remedial plan that would “eliminate the illegal segregation at this school” and “insure that Mark Twain will not deviate more than 10% from the district-wide average of minority pupils in Junior High and Intermediate Schools.” Hart, 383 F. Supp. at 756. The Court’s Remedial Order allowed the School Board to “utilize either its own proposal for ‘Gifted and Talented Children’ or the modified form of that proposal in the Master’s Report designed to provide a ‘Magnet School.’” Remedial Order, 383 F. Supp. at 774. The School Board proposal established Mark Twain as a Gifted and Talented (“GT”) School with admission to be based on an “approximate ratio of 70% Caucasian, 30% ‘Minority’”, which was the approximate ratio of the district’s middle schools at the time.

4. Three decades have passed since the entry of the order regarding Mark Twain. Mark Twain is now a racially mixed, highly-sought-after, excellent school. See accompanying Exhibits and Declarations. The unconstitutional racial segregation of Mark Twain found in 1974 has long been remedied. In a 1990 Memorandum and Order, this Court stated: “It is undesirable for the federal courts to continue supervision of state educational institutions once the constitutional violations that gave rise to the original action have been eliminated – as they have in the case of Mark Twain.” Rubin Decl., Ex. B (Memorandum and Order dated Aug. 15, 1990, rejecting a request by the Mark Twain Junior High School Parents’ Association for an order

directing the Chancellor to provide fully subsidized contract busing of students residing outside of Community School District 21 and attending Mark Twain).

5. Nonetheless, the 1974 Remedial Order has remained in effect, and has continued to be implemented in good faith. The time has come, however, for the Court to terminate the Remedial Order and allow the Chancellor to reassert local control. The Remedial Order requiring admission to Mark Twain based on a set percentage by race has outlived its usefulness as a remedy for unlawful segregation that itself has long since disappeared. The Chancellor thus seeks an immediate end to the required race-based admission percentage in order to allow the 2008-2009 school year placement process for District 21 GT programs, including Mark Twain, to proceed without the use of race.

6. On January 14, 2008, Anjan Rau and Kanchan Katapadi moved on behalf of their children to intervene in this case. The complaint in intervention seeks to modify or vacate the Remedial Order and declare District 21 “unitary,” (Proposed Complaint in Intervention, Relief, ¶¶D, E); and declare the race-based admissions policy at Mark Twain unconstitutional, enjoin the defendants from following it, enjoin defendants to extend to Nikita Rau an offer of admission to Mark Twain, for attorneys’ fees and for other appropriate relief. *Id.*, Relief, ¶¶A-C, F-G. The Court has set March 19, 2008 as a hearing date for the motion to intervene.

7. As explained in the accompanying Declaration of Sandy Ferguson, Executive Director for Middle School Enrollment for the New York City Department of Education, the admission process for District 21’s GT programs, including Mark Twain, has already begun. Applications were due by February 6, 2008, and auditions for all applicants will begin March. In order to timely complete the placement process for the 2008-2009 school year, the Office of

Student Enrollment must know by the end of March how placement will be done for the Fall, and whether the race-based admission percentage still applies. Ferguson Decl. ¶ 7.

8. In order to make the admission and placement process as seamless as possible for the student applicants and their families, the Chancellor is seeking to expedite the hearing on this motion, and to schedule the hearing on the motion to intervene for the same, expedited date.

9. Attached as Exhibit A is the Community School Board 21's Plan in Compliance with Court Order, dated March 1, 1974. ("School Board Plan").

10. Attached as Exhibit B is a Memorandum and Order, Hart v. Community School Board of Brooklyn New York School District #21 et al, (Weinstein, J.) (Aug. 15, 1990).

11. Attached as Exhibit C is the Report of the Special Master submitted by Curtis J. Berger, dated July 1, 1974 (Part I: The School Plan) and July 8, 1974 (Part II: Physical and Human Renewal).

12. Attached as Exhibit D is a Report to the Court dated July 8, 1975 from Allen H. Zelon, President, Community School Board 21, to the Hon. Jack B. Weinstein.

13. Attached as Exhibit E is a Letter dated December 29, 1976 from Hyman Bravin, Attorney for the Community School Board, to the Hon. Jack B. Weinstein.

14. Attached as Exhibit F is a Letter dated July 18, 1985 from Community Superintendent Donald Weber to the Hon. Jack B. Weinstein.

15. Attached as Exhibit G is a Letter dated May 23, 1978 from Hyman Bravin, Attorney for the Community School Board, to James I. Meyerson, Attorney for Plaintiffs, copy to Hon. Jack B. Weinstein.

16. Attached as Exhibit H is New York City Department of City Planning, New York City Public School Demographic and Enrollment Trends 1990-2002, Community School District 21.

17. Attached as Exhibit I is 1980 and 2000 Census data for School District 21 from www.infoshare.org.

18. Attached as Exhibit J is a Memorandum dated February 15, 1984 from Fermin Archer, Zoning Associate, New York City Board of Education, Office of Zoning and Integration, to Joseph Elias, Director, Office of Zoning and Integration.

19. Attached as Exhibit K are the Minutes from Community School Board 21's Public Meeting of March 22, 1995.

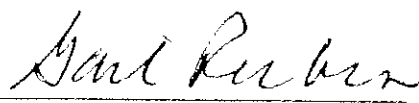
20. Attached as Exhibit L is a 12/89 District 21 Student Register.

21. Attached as Exhibit M is a 10/31/92 School District Profile for District 21.

22. Attached as Exhibit N is a 10/31/93 School District Profile for District 21.

23. Attached as Exhibit O is the Magnet School Assistance Grant Application, Project Abstract - New York City Community School Districts 20, 21 and 31 Consortium for 2007-2008 and Grant Award Notification dated September 26, 2007.

Dated: New York, New York
February 11, 2008


Gail Rubin (GR2833)

RUBIN EXHIBIT A

JEFFREY HART, as a minor by his parent and next friend, DORIS HART, LOUIS VALEZ, as a minor by his parent and next friend MARCIA VALEZ, JUDITH GLANTZMAN, as a minor by her parent and next friend DOROTHY GLANTZMAN, PARENT ASSOCIATION OF PUBLIC SCHOOL #239, an unincorporated association, on behalf of themselves and on behalf of all others similarly situated,

Plaintiffs,

72 C 1041

- against -

THE COMMUNITY SCHOOL BOARD OF BROOKLYN, NEW YORK, SCHOOL DISTRICT #21, a body corporate BARTELO E. PELUSO, as Acting Superintendent of Brooklyn, New York Community School District #21, ABRAHAM COHEN, ALLEN ZELON, EVELYN AQUILA, M. GINGER FREEDMAN, SELMA APFEL, VINCENT J. FONTI, PHILIP H. SINGER, LEONARD J. MAZZARRO and MARIAN NAGLER, as members and officers of the Community School Board of Brooklyn, New York School District #21, IRVING ANKER, Chancellor of the Board of Education of the City of New York,

Defendants.

CSB 21's PLAN
IN
COMPLIANCE
WITH
COURT
ORDER

-----x
THE COMMUNITY SCHOOL BOARD OF BROOKLYN, NEW YORK SCHOOL DISTRICT #21, by its President and Member, EVELYN J. AQUILA, and its Treasurer and Member, MARIAN NAGLER, and VINCENT J. FONTI, as a Member of the COMMUNITY SCHOOL BOARD OF BROOKLYN, NEW YORK SCHOOL DISTRICT #21.

Defendants and Third Party Plaintiffs,

-against-

JOHN V. LINDSEY, MAYOR OF THE CITY OF NEW YORK; THE CITY OF NEW YORK; THE HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK; ALBERT A. WALSH, ADMINISTRATOR, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK; NEW YORK CITY HOUSING AUTHORITY; SIMEON GOLAR, CHAIRMAN, NEW YORK CITY HOUSING AUTHORITY; NEW YORK STATE URBAN DEVELOPMENT CORPORATION; EDWARD J. LOGUE, PRESIDENT, NEW YORK STATE URBAN DEVELOPMENT CORPORATION; DIVISION OF HOUSING AND COMMUNITY RENEWAL, EXECUTIVE DEPARTMENT, STATE OF NEW YORK; CHARLES S. URSTADT, COMMISSIONER, DIVISION OF HOUSING AND COMMUNITY RENEWAL, EXECUTIVE DEPARTMENT, STATE OF NEW YORK; GEORGE ROMNEY, SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND S. WILLIAM GREEN, REGIONAL ADMINISTRATOR, NEW YORK AREA OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Third Party Defendants

-----x

CSB 21's PLAN UNDER ORDER
OF U.S. DISTRICT COURT FOR
EASTERN DISTRICT OF NEW
YORK MADE JANUARY 28, 1974
REQUIRING FILING WITH CLERK
ON MARCH 1, 1974

In compliance with Order of the United States District Court for the Eastern District of New York (Weinstein, J.) dated and filed January 28, 1974, CSB 21 submits and files with the Court the attached "Plan".

The acceptance, by the Court of my client's proposed "Plan" together with a viable, realistic and workable housing "Plan" properly synchronized will resolve the racial balance in District 21 and at Mark Twain. This proposal will chart a new course out of the civil liberties dilemma facing our nation: to the end, stabilized integration of the American people will be creatively established in education, housing and all areas of employment, military defense and political relationship.

Integration in education and housing is not a one-way street. In the past decade, educators, social scientists and civil rights organizations have requested and the Courts have granted unrealistic, mechanical and unimaginative relief under the Brown decision and its progeny. This has accelerated the deterioration of the urban cities core areas with middle class flight of all races, religions and ethnic groups to the suburbs.

At this very moment, the heads of the New York State and City education systems have raised the divisive issue of cross-school district and - County bussing in the name of school integration under the

authority of the United States Supreme Court's rulings in Brown, Green and Swann.

This Court can change this chaotic course, and with peace and dignity, direct the establishment of integration in education and housing, so that the American public can live in an atmosphere free of community tension, hatred, bitterness and the corrosive elements destructive of the American way of life. America can again become the democratic hope of the free world.

Creative imagination and courageous innovation dictate that the basic principles of the School Desegregation Cases of 1954 be applied to the de jure public-aided housing in the Coney Island target area.

The needed relief is clear:

- (1) Order the elimination of the heavy concentration of de jure public-aided housing segregation in the Coney Island target area by directing the integrated movement of some of the tenants to other neighborhood public-assisted housing now available for renting; and
- (2) Simultaneously authorize the perceptible change of the subject school, Mark Twain, into a 70% "white" and 30% "minority" school for Gifted and Talented Children.

The acceptance by the Court of this "Plan" plus implementation by school and housing authorities will attain the end this Court indicated is necessary in its opinion of January 28, 1974 and will induce middle

income families of all races and ethnic backgrounds to move into the Coney Island target area with resultant integration and stabilization.

I close with this conceptual thought:

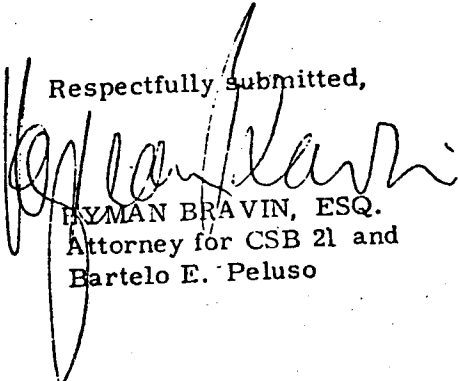
An imaginative Bar begets an innovative Bench; an innovative Bench begets justice for all.

All of these rare elements are present in this case. The problem and the solution are before you. I ask for justice for all.

Dated: New York, N. Y.

March 1, 1974

Respectfully submitted,


HYMAN BRAVIN, ESQ.
Attorney for CSB 21 and
Bartelo E. Peluso

TO:

CLERK
United States District Court
Eastern District of New York

JAMES I. MYERSON, ESQ.
Assistant General Counsel NAACP
Special Contribution Fund
1790 Broadway, New York, New York 10019
Attorney for Plaintiffs.

CORPORATION COUNSEL OF THE
CITY OF NEW YORK
Municipal Building, 16th Floor
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Attorney for Defendant Chancellor Anker and Third Party
Defendants Mayor of the City of New York; the City of New
York; the Housing and Development Administration of the
City of New York, Administrator, Housing and Development
Administration of the City of New York

Att: ELLIOT HOFFMAN, ESQ.

HON. EDWARD J. BOYD, V.
Acting United States Attorney
Eastern District of New York, 225 Cadman Plaza, Brooklyn, N.Y.
By: CYRIL HYMAN, Esq. 11201
Assistant United States Attorney
Attorney for Third Party Defendants, Secretary
of and United States Department of Housing and
Urban Development.

ATTORNEY GENERAL OF THE STATE OF NEW YORK
2 World Trade Center, New York, New York 10047
Attorney for Third Party Defendants, New York
State Urban Development Corporation; EDWARD
J. LOGUE, President, New York State Urban
Development Corporation; CHARLES S. URSTADT,
Commissioner, Division of Housing and
Community Renewal, Executive Department, State
of New York and Division of Housing etc.

Att: ROBERT HAMMER, Esq.

EDWARD W. NORTON, General Counsel
New York City Housing Authority
250 Broadway, New York, New York 10007
Attorney for Third Party Defendant, New
York City Housing Authority and Chairman thereof.

Att: Jean Hollingsworth, Esq.

RESOLUTION
OF A COMMUNITY SCHOOL BOARD
OF BROOKLYN, NEW YORK, SCHOOL
DISTRICT #21, UNDER ORDER OF U.S.
DISTRICT COURT OF JANUARY 28, 1974

Be it, resolved by Community School Board 21 (CSB 21) that:

WHEREAS, on January 28, 1974, the United States District Court for the Eastern District of New York (Weinstein, J.), did enter an Order in the case of Hart v. CSB 21, et als. finding CSB 21 "liable"; and

WHEREAS, our attorney of record has advised us that the Order of January 28, 1974, directs that we submit a "Plan".

NOW, THEREFORE, acting under the duress, coercion, and compulsion of the penalties consequent upon doing otherwise, and under the compulsion of the Order aforesaid, without prejudice and under protest we do adopt and vote for the following:

- I. To redraw the feeding patterns of the middle schools so that the incoming grade of each intermediate, junior high school, and 7th and 8th grade of K-8 schools will reflect approximately 70% Caucasian, 30% "Minority" population that is the approximate ratio of the district's middle schools. A small variation may be necessary in the implementation.
- II. A) Graduate the 8th and 9th grade of Mark Twain to High School.
B) Transfer the present 7th grade of Mark Twain and zone the graduating pupils of P.S. 188

and P.S. 288 to other middle schools in the district (with all of the existing services and programs they would have had in Mark Twain).

III. Establish at Mark Twain a District School for Gifted and Talented Children. (Following points are also made in Section labelled "Program").

A) Entrance by application and selection only.

B) Admit only pupils who are graduating from elementary schools and would normally attend junior high school or intermediate schools in District 21. Students in the 6th grade of K-8 schools shall be eligible. Those students accepted for the program leaving 6th grade to go into 7th grade at Mark Twain. Those students accepted for the program leaving 5th grade to go into 6th grade at Mark Twain.

C) Original group to be about 333 pupils or more.

D) Approximate ratio of 70% Caucasian, 30% "Minority" to be adhered to at Mark Twain School for Gifted and Talented Children.

E) No new SP or SPE programs will be organized henceforth in any school in the district. (Existing programs will continue to graduation).

F) Parents will have the right to have the gifted and talented child returned to his zoned school immediately for any reason."

INTRODUCTION TO PLAN

Senator Javits stated in support of the Gifted and Talented Children's Educational Assistance Act, S. 874, which is known as the Javits-Williams bill on June 28, 1973 at Hearings before the Sub-Committee on Education of the Committee on Labor and Public Welfare U.S. Senate, 93rd Congress:

"Gifted and talented children are the most neglected minority in American education today. The purpose of S. 874 is to assure that these children do not fall by the wayside and are helped to develop their potential."

* * *

"The law defines gifted and talented children as those who have outstanding intellectual ability or creative talent, the development of which requires special activities or services not ordinarily provided by local educational agencies."

* * *

"Educators have noted that the great reservoir of undiscovered and undeveloped intellectual talent is not confined to upper- or middle-class neighborhoods but is as great a potential in low-income neighborhoods and among the poor. In addition, as the Commissioner's report of last year pointed out, gifted and talented children are in fact-

"Deprived and can suffer psychological damage and permanent impairment of their abilities to function well which is equal to or greater than the similar deprivation suffered by any other population with special needs served by the Office of Education."

I wish to repeat the Commissioner's finding and his conclusion:

"The importance to the public of properly educating the gifted has never been greater than at present." (Pp. 579 and 580).

PROGRAM:

A School for Gifted and Talented Children offers a unique opportunity to develop a creative and innovative program designed to meet the needs of these children. Generally, the focus of this proposal is:

- 1) Identify children in the incoming grade who are considered gifted in any of the following areas:
academically, (generally, same standards as used at present to designate SP and SPE students),
instrumental and vocal music, fine arts,
performing arts, (creative dance, drama), etc.
- 2) Create a curriculum that would combine the best elements of the existing program with varied instructional areas that would provide each youngster with the opportunity to explore and develop his individual talents and abilities.

It is recognized that 1) learning is individual, and 2) learning is to some extent sequential. Learning, therefore, will occur in various ways - a student may work individually with a teacher, work in small groups, or attend large group lectures or presentations.

A child will be identified closely with a teacher/counselor who will observe his program closely and schedule him to activities according to his needs and desires. (It must be noted that all State and City educational

requirements will be met). Students and parents will receive reports on progress at least four times a year - close relationships between child, parents, and teachers will be a major factor in assuring that parents will be deeply involved in the pupil's progress. A key aspect of the program will be make-up or advanced classes. Evaluation and reassessment will be part of the on-going process.

The program will have many elements, including:

- a) The typical SP (2-year) and SPE (3-year) program.
- b) Programs for youngsters talented in music, fine arts, performing arts, creative writing, and the like.
- c) Computer assisted instruction.
- d) Computer assisted independent study.
- e) Flexible modular programming.
- f) Marine biology program.
- g) Man and His Environment program.
- h) Art and Science Ecology programs.
- i) The Computer in the Scientific Community.
- j) Advanced Placement courses in mathematics, science, foreign language.

The staff will be chosen carefully. They must be dedicated, capable, and talented professionals. They will be expected to be available to prepare curriculum and to devise instructional methodology for implementation. (Some elements of the program, such as computer assisted instruction, will not begin in September). Technical and other professional resource

people may be required on a per diem or consultative basis.

It is understood that the following are directly related to the implementation of the above described program:

- 1) Beginning in September 1974 SP and SPE classes will henceforth be organized at Mark Twain only.
- 2) The Mark Twain School for Gifted and Talented Children will be open to youngsters who feed schools in our district and are identified as gifted.
- 3) In the first year of operation, we will seek an opening register of approximately 333 children representing the approximate ethnic ratio in District 21 in the secondary schools; namely 70% "others" and 30% "minority".
- 4) Parents will have the right to have the child returned to his zoned school immediately for any reason.
- 5) Existing SP classes in the various schools will continue on until graduation.
- 6) All schools will continue to provide all the superior kinds of programs we have always demanded in District 21.
- 7) In devising the "Plan" we actively consulted with the Parents Association of every school in the District, the Presidents Council of District 21, community, civic and religious leaders, and the District's staff. In order to insure continuing and meaningful consultation, a "Consultative Council" will be established which will be concerned with the implementation of the program on an on-going basis.

(iii) 238 white students would be rezoned from J.H.S. 228, 128 to I.S. 303, and 110 to J.H.S. 239. In addition, 70 Puerto Rican students would be rezoned from I.S. 303 to J.H.S. 228.

(iv) 57 black and 51 Puerto Rican students would be rezoned out of J.H.S. 239.

By Dr. Dodson's own admission, the Model was "devised without data on attendance zones, proposed building plans for residential housing and without the data on long range trends of ethnic blend within the district." In addition, the Model does not set up any feeder patterns, and suggests that certain details be "handled administratively." Accordingly, the Special Master believes that Model II in its present form does not present an adequate mechanical basis for the desegregation of Mark Twain. In addition, for the reasons discussed in greater detail below, the Special Master rejects the wide-ranging busing inherent in Model II as the primary mode of desegregation.

However, as stated above, it may become necessary to adopt a busing plan in the event that the new school does not attract sufficient numbers of students to declare the plan effective. For that reason, it is recommended that the District promptly undertake the preparation of a plan of redistricting and busing, derived from Model II or an

8. Transportation:

(A) Contract Buses from convenient pick-up points to school and back home.

(B) Shuttle Bus (or change route of Mermaid Avenue bus). to school from terminal for pupils who are late or parents who are visiting.

CONCLUSION

Other than as specifically stated hereinabove, every effort will be made to implement this plan immediately.

In the event of an alleged non-compliance, notice by the complaining party shall be given to CSB 21, who shall convene a meeting of the parties for a resolution of the issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CIVIL NO. 72 Civ 1041

-----x
JEFFREY HART, etc., et. al.,

PLAINTIFFS

vs

THE COMMUNITY SCHOOL BOARD OF
BROOKLYN, NEW YORK SCHOOL DISTRICT
#21, etc., et. al.,

DEFENDANTS

-----x
CSB 21's PLAN
IN
COMPLIANCE
WITH
COURT
ORDER

THE COMMUNITY SCHOOL BOARD OF
BROOKLYN, NEW YORK SCHOOL DISTRICT
#21, etc., et. al.,

DEFENDANTS and
THIRD PARTY
PLAINTIFFS,

vs

JOHN V. LINDSAY, etc., et. al.,

THIRD PARTY
DEFENDANTS

-----x
HYMAN BRAVIN, ESQ.
Attorney for Defendants and Third Party Plaintiffs,
THE COMMUNITY SCHOOL BOARD OF BROOKLYN, NEW YORK,
SCHOOL DISTRICT #21, BARTELO E. PELUSO, Acting Superin-
tendent of Brooklyn, New York Community School District #21,
and all of the members of the Community School Board of
Brooklyn, New York District #21,

Office and Post Office Address
6 East 45th Street
New York, New York 10017
(212) OX 7-1055

RUBIN EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

JEFFREY HART, as a minor by his parent
and next friend, DORIS HART, LOUIS VALEZ,
as a minor by his parent and next friend,
MARCIA VALEZ, JUDITH GLANTZMAN, as a minor
by her parent and next friend, DOROTHY
GLANTZMAN, PARENT ASSOCIATION OF PUBLIC
SCHOOL #239, an unincorporated association,
on behalf of themselves and on behalf of
all others similarly situated,

Plaintiffs,

-against-

THE COMMUNITY SCHOOL BOARD OF BROOKLYN,
NEW YORK SCHOOL DISTRICT #21, a body
corporate, DONALD WEBER, Superintendent
of Brooklyn, New York Community School
District #21, SHELDON PLOTNICK, RALPH
TERANTINO, IRENE BARBARO, HARRY SCHWARTZ,
HERBERT S. EISENBERG, IRIS LEVINE,
DOMENIC RECCHIA, CARMINE SANTA MARIA,
and PAUL SPIRGEL, as members and officers
of the Community School Board of Brooklyn,
New York School District #21,

Defendants.

JOSEPH FERNANDEZ, Chancellor of the
Board of Education of the City of
New York,

Defendant.

MARK TWAIN JUNIOR HIGH SCHOOL PARENTS'
ASSOCIATION,

Intervenor.

-----X

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT, E. D. N.Y.

TIME A.M. _____
P.M. _____

16 AUG 1972

72-CV-1041
MEMORANDUM
AND ORDER

NOTED

440

Weinstein, J.

I. Prior History

In 1974, this court approved a plan establishing the gifted and talented program at Mark Twain Junior High School. See Hart v. District 21, 383 F. Supp. 769 (E.D.N.Y. 1974), aff'd 512 F.2d 37 (2d Cir. 1975).

II. Present Relief Requested

In an Order to Show Cause filed on August 3, 1990, intervenor Mark Twain Junior High School Parents' Association requested an Order directing the Chancellor of the Board of Education of the City of New York to provide fully subsidized contract busing of students residing outside of Community School District 21 and attending Mark Twain Junior High School beginning with the 1990-91 school year. The court treats this Order To Show Cause as an independent petition.

On August 6, 1990, this court held its first hearing on this matter. An additional hearing was held today, August 15.

III. Decision

The petition must be denied.

1) The parties are agreed that up until this time, the school has been administered without denying anyone their

constitutional rights. No order to rectify prior constitutional violations is required or permissible.

2) Evidence adduced at today's hearing indicates that the racial ratios at Mark Twain Junior High School would remain the same regardless of whether or not contract busing of out of district students is mandated. Denial of the petition will not cause the school to be in a condition of racial imbalance so as to constitute a violation of constitutional rights.

3) It is undesirable for the federal courts to continue supervision of state educational institutions once the constitutional violations that gave rise to the original action have been eliminated -- as they have in the case of Mark Twain.

4) The court must take judicial notice of the financial problems of the Board of Education, city and state. Any order requiring an expenditure as sought by petitioners would necessarily take funds from other enterprises. In the absence of a current constitutional issue, division of such limited funds is best left to those responsible government entities.

5) Other students made selections of schools on the assumption of the present busing schedules. It would be unfair to deny all of them a chance to reapply to Mark Twain.

At this late stage with school about to start in September, such changes would be disruptive of a number of school districts and schools.

6) Both a preliminary and final injunction must be denied. There is no basis for any injunction. The equities clearly favor defendants.

The court appreciates the distinguished record of Mark Twain Junior High School. Its dedicated staff, students and parents have created, with great effort over many years, an outstanding school -- a strong magnet for those superior students seeking quality education. This petition was brought in good faith and for highly commendable purposes. The court regrets that it can give no assistance to petitioners.

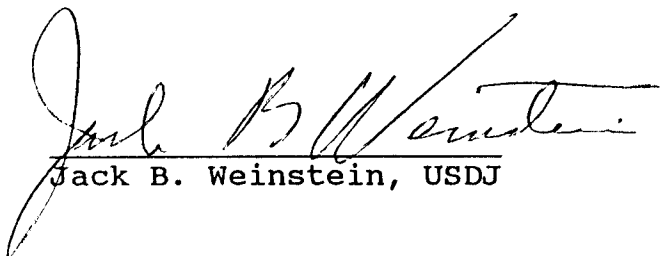
The petition is dismissed. No costs or disbursements are assessed against petitioners.

A decision is handed down today to permit immediate appeal if that is desired. No view as to appealability is expressed.

SO ORDERED.

Dated: Brooklyn, New York

August 15, 1990


Jack B. Weinstein, USDJ

RUBIN EXHIBIT C – PART 1 OF 2

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

72 C 1041

HART ET AL. V. COMMUNITY SCHOOL BOARD, ET AL.

REPORT OF THE SPECIAL MASTER

Part I: The School Plan — July 1, 1974

Part II: Physical and Human Renewal — July 8, 1974

Submitted by:

Curtis J. Berger

PART I

THE SCHOOL PLAN

July 1, 1974

PART I

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COMMENCING SEPTEMBER, 1975, THE MARK TWAIN JUNIOR HIGH SCHOOL SHOULD BE ESTABLISHED AS A NEW, SPECIAL JUNIOR HIGH SCHOOL OPERATED, WHERE FEASIBLE, ON THE MODEL OF JOHN DEWEY HIGH SCHOOL.

The Special Master believes that Mark Twain (J.H.S. 239) can best become an integrated school through the establishment there of a new special junior high school modeled, where feasible, after John Dewey High School.

Three possible solutions to solving the Mark Twain situation were considered:

a. Close the school and disperse its student body among the other middle schools¹ in Community School District #21 (hereafter, "CSD 21" or the "District"). This alternative was not seriously considered.

Judge Weinstein found that

"[Mark Twain] is a well constructed three-story brick building approximately forty years old, thoroughly rebuilt and refurbished a few years ago. Among its facilities were a large modern auditorium, separate large gymnasium for girls and boys, a large lunchroom with a modern kitchen, well-equipped science laboratories, a well-stocked library, and home-making and other specialized rooms. New typewriters and calculating equipment, machines for remedial reading, and other paraphernalia of modern teaching are available in satisfactory quantities. The printing and other shops

¹As used in this section of the Report, the term "middle schools" means junior high schools 43, 228, 239 and 281 (grades 7 through 9) and intermediate schools 96 (grades 6 through 9 SP) and 303 (grades 6 through 8). P.S.'s 99 and 238, which are K-8 schools, enroll middle-school age children in their 7th and 8th grades. Beginning in September, 1974, intermediate school 303 will become a junior high school. See pages 66-70 infra of the Report.

"[e]liminating Mark Twain to prevent segregation could, under the circumstances, only be viewed as further invidious discrimination against minority peoples of this school. It would also have the effect of cutting down the number of openings in the Northern part of District 21 for students from Bedford-Stuyvesant, thus frustrating the efforts of the City to provide nonsegregated education for at least some of those living in the central City" (Opinion, pp. 145-146).

b. Adopt one or a combination of the "Models" proposed by Dr. Dan W. Dodson, consultant to the N.A.A.C.P., Special Contribution Fund (see, memo of Dr. Dodson, February 22, 1974). Dr. Dodson is an acknowledged expert in school desegregation; indeed, one of his basic premises, that the student body of each of the middle schools of CSD 21 should reflect the approximate ethnic composition of all children of middle school age, is one of the major considerations of the recommendations herein. However, most of the Models called for radical reorganization of the feeder pattern of the middle schools and the involuntary busing of hundreds of children to implement the reorganization.

In today's emotional climate, forced busing to achieve integration must be a solution of last resort and not the place to begin. To be sure, the overall racial balance within the District would permit the recasting of feeder patterns so that Mark Twain and every other middle school would achieve integration. And if all else fails, the Court may have no other alternative but to direct this remedy.

Where another route exists, however, that not only may achieve integration, but also offer other educational benefits and gain broad-gauged community support, that avenue should be carefully explored. We believe that way has appeared.

c. Adopt (with modification) the proposal of the Community School Board (hereafter, the "School Board") that Mark Twain be converted to a school for gifted and talented children. Since we took this course, the remainder of this section of the Report speaks to the reasons for this decision and to the elaboration of the proposal.

The need for a different educational milieu for gifted and talented children is currently receiving considerable attention (see, e.g., "Accelerating the Educational Program of Intellectually Gifted Youths," Dr. Julian C. Stanley, Educational Psychologist, Vol. 10, No. 3, pp. 133-146, 1973; "Gifted Children in a Bind," Verna Tomasson, The Nation, CCXVII, pp. 688-691, December 24, 1973; Article by Dr. Harold C. Lyon, Jr., Learning, January, 1974). The commentators write of millions of children, of all ethnic groups, who have unusual intellectual, creative or aesthetic endowment, and of the considerable problems these children face in American education today--ordinariness and uniformity of school curricula, failure to be identified, hostility of school staff, lack of trained staff, and lack of special programs. Senator Javits,

testifying in support of the Gifted and Talented Children's Educational Assistance Act (S. 874, 93d Congress, 1973), called gifted and talented children "the most neglected minority in American education today," and noted the need to develop "the great reservoir of undiscovered and undeveloped intellectual talent . . . in low-income neighborhoods and among the poor." Dr. Stanley, of the Department of Psychology of the Johns Hopkins University, cited above, noted the "horrifying" aspect of "the stultification of intellectually brilliant youngsters that is caused by lock-step age-in-grade practices" (letter to Mr. Lipkins of the Special Master's staff, May 6, 1974).

Dr. Dodson argued against converting Mark Twain into a school designed to attract students because of the nature of the program (sometimes called a "magnet" school) on the grounds that "[t]here is little experience to indicate that special programs have ever drawn white students into minority areas." While it is undoubtedly true that many such schools have proven to be failures, there have been notable successes in the area. In Roxbury, Massachusetts, the Boston Black ghetto area, the William Monroe Trotter Elementary School (grades K-5), drawing on the entire Boston school system (including the suburbs), on a purely voluntary basis, is approximately 50-50, white:non-white, with an extensive waiting list of white children. Similarly, in Providence, Rhode

Island, the Flynn Model School (grades K-5), a 20-year old building located in South Providence, the Black ghetto of that city, was established as a magnet school in the mid-1960's in connection with the desegregation of the entire Providence school system. Today, also on a completely voluntary basis, the Flynn school is 70 percent white and 30 percent minority. In addition, P.S. 260, an elementary school located in District 19 in the East New York--Brownsville--area of Brooklyn, which is 90 percent Black and Puerto Rican, adopted in 1964 a voluntary program devoted exclusively to children with artistic and musical talent, and has attracted a white population considerably above the district average.

There is independent reason to believe that the magnet school concept--if it can work anywhere to achieve integration--can succeed in CSD 21. In 1969, The City of New York (hereafter, the "City") organized John Dewey High School to carry on a program which significantly departs from the educational fare traditionally offered in the City's high schools. John Dewey is located within the District, not far from Coney Island, and from the start, CSD 21 children have had first priority on the school's available space. Quite frankly, the District originally greeted the new school with some skepticism, but in its five years of operation, John Dewey's educational philosophy and the richness of its program have exceeded their promise and the school enjoys an outstanding reputation.

throughout the District. Many, many CSD 21 parents elect to send their children there, even though another high school is closer at hand. In addition, after the space priority enjoyed by CSD 21 youngsters, Dewey draws students from the rest of Brooklyn. Many of these children travel well over two hours daily to and from the school, and there is a long waiting list for available places.

John Dewey is geared to engage the minds of the brightest youngsters and the talents of the most creative, but it is more than a school for the gifted and the talented. It offers programs for those who have special skills or interests--in the sciences or in languages, for example, and for those who already have begun to develop career tools--in wood or metal technology or in typing and shorthand, for example. It has an intensive and comprehensive remedial program for students with problems in the basic areas. It has an extensive physical education and intramural sports program, helping to train youngsters for athletic competition and related careers. And, above all, John Dewey has sought to individualize instruction, to avoid the impersonalizations of large, overcrowded schools, and to develop in each student a sense of self-reliance and greater responsibility.

The John Dewey program, goals, and philosophy, applied where applicable at the Junior High School level, form the basis, we believe, of a magnet school at Mark Twain that can achieve integration. In these respects, the Master's Plan goes beyond the School Board's original submission, which would

have limited Mark Twain to a school for gifted and talented children. Certainly, we would hope and expect that such children would be attracted to the school in large numbers. But an expanded and more innovative concept, drawing upon the Dewey experience and open to all youngsters in the District, should not only improve the chances of integration but also enrich the learning experiences of every child within the school.

Dr. Dodson has also argued that "[t]his type school is a veiled 'freedom of choice' operation, [which] places the responsibility for desegregation upon the parent, and white parents will not accept this responsibility". In many other places, this has not been an idle argument, and mindful of this concern, the School Board has indicated that it would phase out the SP (and SPE)³ programs at the other middle schools, so that parents would have to enroll their children at Mark Twain if the children were to pursue those programs. Whether such programs should be phased out at the

³SP is a program in which qualified children are able to complete the normal three-year middle school program in two years. Eligible children are those who in the sixth grade have achieved a reading score of 8.9 and a math score of 8.0 on the City-wide aptitude tests, and whose maturity for an accelerated course has been confirmed by teachers and guidance counselors. SPE is an enriched three-year middle school program, in which the children take Earth Science, normally a high school course, in the ninth grade, receive advanced foreign language credit and are eligible for certain art and music courses. The qualifications for SPE are generally the same as those for SP. The decision between SP and SPE is made by parents of eligible children, upon consultation with school officials. Occasionally, the school will override a parent's decision to opt for the SP on the grounds that a child is not mature enough for a two-year program. Both programs carry considerable prestige for both parents and children.

other schools has been among the most agonizing decisions that the Special Master has had to make, and it will be dealt with later in the Report.

The plan is not without considerable present support. The School Board which proposed a magnet school represents many elements of the community. In devising the plan, the School Board "actively consulted with the Parent's Association of every school in the District, the Presidents Council of District 21, community civic and religious leaders, and the District's staff" (Submission of School Board in Compliance with Court Order). The Special Master has met with the presidents of the parents' associations of nearly every school in the District and believes that there is already an understanding of the choices that are available to the Master, a readiness to find reasonable and educationally sound ways to achieve integration, and a deep-insufficiently tapped-reservoir of decency and good will. The Special Master believes that if the School Board devises a plan that promotes learning, if that plan gets a fair articulation, and--it cannot be ignored--if parents living outside Coney Island are assured as to their children's physical safety--sufficient numbers of children can be attracted to make a new school viable.

Integration of Mark Twain is a vitally-important first step in the process being treated here; it should not, however, be the last. Quite apart from desegregation and the other

far-reaching implications of the instant litigation, there is presented here the opportunity to provide the children of CSD 21 with a unique educational experience. Such an opportunity should not be missed.⁴

⁴In his opinion, Judge Weinstein ordered that the plan for desegregating Mark Twain shall take into account the "six basic elements in successful school integration," as listed by the Report of the Select Committee on Equal Educational Opportunity, 92d Cong., 2d Sess., No. 92-000, 29-31 (1972). The Special Master has considered these six elements, and, as shown by the following discussion, believes that the recommendations herein achieve their aims. (1) Community Participation. The CSD 21 community has been playing, and will continue to play, an active part in the creation of the new school. The School Board's original submission and the Master's recommendations are based, to a not inconsiderable extent, on feedback and suggestions from the community. It is also recommended that representatives of the community take an active role in the implementation of final plans for the new school and in its ongoing activities after commencement. (2) Socioeconomic Diversity. We believe that a school modeled after John Dewey High School, which attracts students from the entire District and from all walks of life, offers the best opportunity to achieve socioeconomic diversity. The District encompasses people of many social, ethnic and financial groups, and it is expected that the wide range of educational opportunities to be offered at the new school will generate sufficient interest to attract children from all socioeconomic classes. (3) Early Integration. To some degree, this already exists. There are minority students in all of the District's elementary schools, in some cases in large numbers. For white children attending the new school, the presence of significant numbers of minority children there will not be a matter of first impression. (4) Integrated Classrooms. The recommendations contemplate the absence of tracking, and its attendant segregative effects, within the new school. (5) Access of Language Minorities to Bilingual Programs. Recommendations are made for the continuance of existing bilingual programs, and we stress that bilingual programs should continue to be offered to students who are to be transferred out of Mark Twain. (6) Mutual Undertaking and Respect. Recommendations are made for the preparation and education of the community for the changes which will occur.

Implementation of the Recommendation

1. The School

As we have indicated, we believe that the School Board should, wherever applicable to a middle school situation, be guided by the goals, philosophy and methods of John Dewey High School. It is important, however, to stress that the new school should not and cannot simply be John Dewey High School replicated on the middle school level. Dewey, with its 2400 students, is twice as large as the new school will be, is housed in a school plant which was specially constructed for its program, and, most importantly, deals with older children. In addition, Dewey, being a Borough-wide high school, is financed within a more flexible context than that of a middle school administered by a community school board. Nonetheless, we believe that the Dewey example provides many exciting and educationally-sound parallels for the formulation of the new school, and that the School Board should consult with the faculty and administration of Dewey in its implementation of the plan. In addition, the School Board should draw on the resources of the Department of Education at Brooklyn College whose Dean, Irene Impellizzeri, and Associate Dean, Leon Lo Monaco, have told the Special Master of their readiness, as members of a Faculty Committee, to aid the School Board in formulating the plan.

At the outset, we set forth the enunciated goals of John Dewey High School, which appear in that school's brochure. We believe that these goals would well serve the school we have in mind:

- (i) Program flexibility designed to enable students to learn at their own rate and in accordance with their potential and capabilities.
- (ii) A vast array of course offerings designed to meet the needs and interests of students on all ability levels.
- (iii) Individualization of instruction and a serious attempt to avoid the impersonalization of large, overcrowded schools.
- (iv) The development of a sense of self-reliance and increased student responsibility.
- (v) Encouragement of independent study and the ability to learn outside of a formal classroom.
- (vi) Teacher and student involvement in the development of the educational program.
- (vii) Decreased emphasis on numerical grades and concentration on the concepts of learning and mastery.
- (viii) Increased student involvement in co-curricular activities.

The aspects of the workings of the new school should be as follows:

a. Curriculum

According to Mr. Sol Levine, Principal of John Dewey, a major key to the success of the Dewey program is a vast number of alternative educational options, offering work ranging in complexity from basic skills to more sophisticated matter. Indeed, the range of courses offered at Dewey is one which many colleges would do well to emulate.

This principle should be applied to the fullest at the new school. Because the new school will be smaller than Dewey (especially in its opening years), and the children there younger than at Dewey, the same array of courses and degree of freedom of choice need not be offered. Also, it is to be expected that budgetary considerations will play a part in the formulation of the curriculum. Nonetheless, the curriculum should be broad enough so that there will be an area within which every student can pursue his or her interests.

Subject to the foregoing limitations, and of course considering the necessity of providing basic courses to meet City and State requirements, the curriculum at the new school should include at least the following:

(i) A broad language arts program providing for numerous electives in literature, oral communications and writing.

(ii) Science courses designed to provide introductions to such areas as chemistry, biology, physics, anthropology, psychology and the like. The proximity of the Aquarium and the City beaches make such areas as marine biology and ecology logical choices. Extensive use should be made of the well-equipped science laboratories at the school.

(iii) Mathematics courses designed to develop problem-solving skills, strengthen intuitive insights and develop powers of logical analysis. This would include basic and advanced courses in algebra and geometry. There should also be courses in finance and economics and courses showing the relationship of mathematics to other disciplines. If economically feasible, a computer program such as that now offered at J.H.S. 43 should be instituted.

(iv) Social studies courses treating such subjects as world area studies, western civilization, economics and roles of minorities, including women. A course, or series of courses, in Constitutional Government would seem to be particularly apropos.

(v) A strong remedial program, utilizing the most advanced education techniques, in the basic areas of bilingual education, reading and math.

(vi) A wide range of courses offering individual and group experience in music performance. Electives should include orchestra, various types of bands and singing ensembles and perhaps an introduction to electronic music.

(vii) A broad number of courses in the fine arts, including painting, dance, photography, sculpture and design.

The music and fine arts courses are, of course, the key to the attraction of talented children. The offerings in these areas should be more attractive, comprehensive and complete than any such programs in the other middle schools. A concept which has been tried successfully in Dewey and in various other City schools is the utilization of a well-known "artist-in-residence."

(viii) At least all of those foreign languages now being taught in the middle schools. In addition, to the extent that middle school students have the maturity, there should be independent study programs for languages not normally offered.

(ix) Home economics courses available in such areas as foods, clothing and nursing. Boys should be encouraged to elect these courses.

(x) Business education courses such as typing, shorthand, office machines, elementary accounting and computer programming. In this same vein, there might be pre-professional courses offering training for future nurses and health-care paraprofessionals.

(xi) An extensive physical education and intramural sports program. Maximum possible use should be made of the park adjacent to the school.

(xii) Courses in the industrial arts, such as wood and metal technology, automotive and aeronautical repairs, electricity, mechanical drawing and graphic arts.

It is realized that the formulation of a curriculum is a very complicated and difficult task, and will require many months of work by skilled and dedicated people. Yet this is not an effort which must be cut from whole cloth. Precedent for the type of program presented here already exists at Mark Twain. An experimental "Educational Alternatives"³ program, similar in many respects to some of the proposals for the new school, was instituted at the school in 1972 and was favorably received by students, faculty and administration.

³Under the "Educational Alternatives" program, eighth and ninth graders at Mark Twain were offered the opportunity to choose four so-called "sub-schools," two from each of the following groups: Group A--Practical Arts, Mathematics, Science, Communications; Group B--Health and Physical Arts, Humanities, Music, Art. The 450 students who participated spent 8 out of 35 weekly periods in the sub-school courses they elected. Within each sub-school, a wide variety of courses were offered. For example, in the Communications sub-school, the areas of creative writing, photography, motion pictures and video tape and journalism, each area with its own series of courses, were available. Each sub-school was the product of a carefully thought out and well-detailed program of objectives and procedures, prepared by faculty and staff. The program was funded by a grant of nearly \$180,000 in New York State Urban Education funds. Unfortunately, the program was cut back drastically at the beginning of the 1973-74 school year because it did not emphasize the areas of reading, mathematics and bi-lingual education, to which Urban Education funds are primarily applicable. Except for some minimal newspaper coverage (See, e.g., New York Sunday News, December 17, 1972, p. B108), the program was not advertised. Had there been some advertising, it is conceivable that additional funds might have been attracted and that interest in the program might have been generated in other parts of the District.

There is also a considerable amount of information and expertise to be drawn on from within the District and within New York City as a whole. Mr. Levine of John Dewey has offered the resources of his school and staff, and other schools having specialized programs (such as Bronx Science, Stuyvesant, Edward R. Murrow [formerly North Central], and Hillcrest High Schools and Hunter College and High School) might also lend assistance. In addition, the sixth graders during the 1974-75 school year should be polled to determine the types of courses which would be most attractive to them.

b. Absence of Tracking

In a system of "tracking," or homogeneous grouping of students, students attend certain key classes with other students of similar ability. As a result, interaction between brighter children and less able children may be sharply reduced within a school. Tracking has of late come under considerable criticism, in large part because of the ethnic segregation caused by the unfortunate fact that educationally-deprived minority children generally constitute the greater portion of the "less able" category. To allow such a situation to develop in the new school would be violative of the principle of desegregation which is at the heart of the matter.

The John Dewey model is instructive here. At Dewey, students of all abilities attend basic courses together, and tracking has been eliminated by use of flexible programming. The Dewey brochure explains how this works:

"In English and Social Studies, students who receive an R (for retention--indicating the need to repeat a course due to a failure to achieve mastery of the subject) can opt for an alternative course, thereby avoiding the failure syndrome associated with repeating courses. In sequential skill subjects, such as Mathematics and Foreign Language, we have provided for a series of attenuated courses; that is students can take algebra in the normal five-phase span (one year), in a seven-phase span (one and one-half years), or in ten phases (two years). There is frequent movement within the 5-6-10 phase courses, depending upon teacher-counselor recommendations. Capable students can pursue advanced studies in accordance with their needs and abilities, i.e., calculus, advanced biology, fifth-year foreign language, etc.

It is recommended that a system embodying this flexibility be adopted at the new school. Corollary elements of this would be a program enabling the most proficient students to graduate to high school after two years and, as noted above, a strong remedial program, taught by specialists, in the basic areas.

The Board should also draw upon the experience of Norman Goldenberg, Principal of I.S. 96, who has devised a system of "bi-modular" instruction within his school to avoid the evils

of tracking. The program, now in its third year, calls upon the best of teacher and student alike--as does everything that is worthwhile; but it has also gained their respect.

To achieve a school-wide ethnic composition which is reflective of the entire district would be meaningless if within the new school the classes were segregated. The absence of the segregative effects of tracking is particularly important since there is a possibility that, in the early years at least, white students may make up the bulk of the academically able.⁵

c. Individualized Education

Individualized instruction is the "attempt to get learning theory in harmony with the individual differences of each student" ("An Introduction to Individualized Instruction," monograph by Lloyd Bishop, School of Education, New York University). It is based on the two major premises that students learn at different rates, and that learning is incremental and sequential (id.). It attempts to custom-tailor instruction to fit a particular student at a particular point in time, and there are a number of organizational, technological and educational facilities, strategies and programs which have been developed within the past few years to implement its precepts (id.). A number of these strategies and programs

⁵At the present time, minority children comprise fewer than 10 percent of the SP students attending middle schools in the District.

are utilized at Dewey. Among the most prominent are:

(i) Flexible Modular Scheduling: Under this technique, the school day is broken into 20-minute "modules." Courses are programmed to meet for two, three or more modules per day, depending on the needs of the course.

(ii) Independent Study: In Dewey, 25 percent of the school day is non-directive. Students have the option of going to department resource centers, using the library or relaxing. Resource centers are specialized rooms equipped with hardware and software related to the subject areas. Each major subject area has its own resource center. Additional teachers are available in resource centers for assistance and advanced study. During independent study time, students may also engage in independent study groups relating to political, social and economic areas.

(iii) DISKS (Dewey Independent Study Kits): These are self-contained courses taken outside of the formal classroom situation. Students work with advisors while completing the DISKS. In certain situations, advanced students are allowed to formulate their own DISKS.

Similarly, the School Board, in its submission, proposed utilization of modular scheduling, computer-assisted instruction, computer-assisted independent study and variable programming, i.e., students working individually with teachers, in small groups or at large group lectures or presentations.

It is beyond the scope of this section of the Report to evaluate and recommend the inclusion or exclusion of a particular technique of individualized instruction. Some may be inappropriate to a middle school situation, due to the youth of the children involved. For example, many junior high school students may not be ready to handle large blocs of free time or too much independent study. On the other hand, most educational experts agree that individualized instruction is beneficial, and the premises upon which it is based mandate the inclusion of a substantial number of its techniques with a school of this type.

d. Staff

The staff of the new school is of course crucial to its success. In the words of the School Board submission:

"The staff will be chosen carefully. They must be dedicated, capable and talented professionals. They will be expected to be available to prepare curriculum and to devise instructional methodology for implementation. . . . Technical and other professional resource people may be requested on a per diem or consultative basis."

Determination of the composition of the faculty, administration and supportive staff should be undertaken at the earliest possible opportunity. Present staff at Mark Twain and throughout CSD 21 should be evaluated as to suitability for the new school, and decisions should be made as to the need to recruit additional personnel. Discussions should be entered

into with the United Federation of Teachers and the Council of Supervisory Associations, to define and solve quickly the problems of staff assignment.⁶

Discussions with officials of the Flynn and Trotter schools have indicated that an important aspect of their programs has been the presence of a large supportive staff. This concept should be adopted at the new school. It will be particularly important in the early years to have considerable adult supervision to deal with problems caused by underutilization. A ratio of 1 and 15 between professional staff and students has been recommended by the School Board ("Recommendation for a Middle School for Gifted Children: A Program for Responsible Learning," February 22, 1974).

There should be an extensive guidance program. At John Dewey there are full-time counselors with a student load of 300 each, enabling the counselors to provide extensive educational and vocational counselling.

At Dewey there is also extensive use of paraprofessionals and technical assistants who handle many of the day-to-day administrative, support, community relations and technical tasks, thus enabling teachers to maximize their time in educational pursuits. College students could be used profitably as teacher's aids and paraprofessionals.

⁶The AFT and UFT have published informative booklets containing suggestions about staffing on the middle school level. See, "A National Design for the Middle School," American Federation of Teachers, AFL-CIO, 1012 14th Street, N.W., Washington, D.C. 20005; "A Plan for Restructuring the Middle Schools," United Federation of Teachers, 260 Park Avenue South, New York, N.Y. 10010.

The Flynn school has three principals, instead of the usual one, each performing a different function, including one who acts as a full-time liason with the community at large. At Flynn there is also a full-time social worker to deal with domestic problems of the students.

e. Funding

Funding for the new school, while doubtless a major consideration, should not be allowed to excuse its failure. Given the far-reaching implications of this law suit, it is incumbent upon the City of New York, via the Board of Education, to make sure that the funds are there. As we will say again, this law suit concerns far more than the integration of Mark Twain. At stake is whether a desegregated school system can survive in New York City and ultimately, whether New York can survive as an integrated, fiscally solvent, and harmonious city. The District is the geographic spinal column of Brooklyn and is, in many respects, a demographic microcosm of large portions of New York City. If CSD 21 can solve its problems of integrated education, while at the same time improving the very fabric of education, the lesson will not be lost on school districts elsewhere in the City. Neither will the lessons be lost if CSD 21 fails.

There is little question that the new school will involve heavy expenses, particularly at the outset. Funds will be needed for new hardware and software, an extensive recruitment

campaign (discussed below), formulation of new courses, hiring of specialist teachers, supportive staff and consultants (and possibly an artist-in-residence) and, particularly, insuring that children who otherwise would have benefitted from the enriched program at Mark Twain will not be deprived due to their transfer to other schools. Traditional sources of funds⁷ should be exploited to the fullest. In addition, within the monies normally available to it, the School Board should make a favorable allocation to the new school. In the School Board's hands, and in the hands of the District's professional

⁷On the Federal level, funding for some of these programs has traditionally been provided under the Elementary and Secondary Education Act of 1965 (Public Law 89-10, as amended), particularly Title I (designed to provide programs for meeting the needs of educationally deprived children in low-income areas), and Title III (designed to improve education by enabling a community to provide services not already available, to improve the quality of educational services already offered, and to stimulate and assist in the development of exemplary educational programs). Federal funds have also been provided to similar programs under the Emergency School Aid Act of 1972 (Public Law 92-318), designed to assist local educational agencies with grants of additional funds in the process of eliminating, reducing or preventing minority group isolation and for improving the quality of education for all children. Under this Act, District 19 recently received funding for teacher salaries, equipment and transportation for a new, grade 4-6 school for the intellectually-gifted. (ESAA is being phased out, but there are programs with similar ends being considered by Congress.) On the State level, under Chapter 241 of the Laws of 1974 (the replacement for State Urban Education funds), tax levy funds will be provided, inter alia, for occupational education. On the City level, funds under the Chancellor's Incentive Program and mini-grants administered by the Office of Educational Management should be explored for applicability to the new school. (For additional information see the book entitled "Special State and Federal Programs," put out by the Division of Funded Programs of the New York City Board of Education, and the "Catalog of Federal Domestic Assistance," put out by the Executive Office of the President, Office of Management and Budget, Washington, D.C. 20503.)

staff, will lie the final responsibility for the program's success or failure. To the extent, however, that the School Board's own resources and monies available from elsewhere fall short of funding adequately the program at the new school, the Board of Education must be ready to augment the School Board's fund.

Of course, where funds are not normally available for extraordinary expenses, additional sources will have to be developed (and, naturally, the more money available, the greater the chances will be for developing the full potential of the new school). In this connection, proposals evidencing the strong support of the School Board should be made to private foundations, particularly those with educational and urban interests. Foundations might be looked to for funds for the planning aspects of the new school or for implementation of specific areas, such as science programs or programs in Constitutional Government. For example, the National Endowment for the Humanities (Washington, D.C. 20506) has funds available for the 1975-76 school year for project grants designed to encourage the development and testing of imaginative approaches to humanities education, and for youth grants designed to support humanities projects developed and conducted by students. (Applications for both of these programs must be made by November 1, 1974).

Furthermore, New York City is the center of many of this country's industries--theatre, television, fashion, banking, securities and printing, to name a few. These industries too have a considerable stake in the future education in the City, and they should be approached with a view towards funding elective programs designed to stimulate interest in their respective areas. The publicity generated by this law suit, and which would be generated by the success of the new school, would seem to make such funding an attractive opportunity to these groups.

f. Transportation

No child should be called upon to endure undue transportational hardships on account of the adoption of this plan. Transportation must be provided both to students outside Coney Island who elect to attend the new school, and to students within Coney Island who must attend school in other parts of the District. Happily, no part of the District is more than three miles from the school, a distance which can be covered by a short bus ride.

Both groups of children should be transported on contract buses. They should be picked up at convenient and frequent pick-up points and delivered directly to their respective schools. At the end of the day, they would be returned to the pick-up points.

In addition, there will be children affected by this plan who do not wish to travel by contract bus or who arrive at or leave their schools outside of regular hours. To provide for these contingencies, all CSD 21 children affected by this plan should be issued reduced fare eligibility cards (type 3) by the Bureau of Pupil Transportation of the Board of Education. With these cards, students pay a reduced fare for travel to and from school, and the Board of Education reimburses the Transit Authority for the difference between the reduced and regular fares.

Present Bureau of Pupil Transportation regulations provide that in order to be eligible for a type 3 card, a student must travel more than a mile on each leg of public transportation between home and school. In order to travel to Mark Twain by public transportation from outside Coney Island, a child must now take a bus or subway to Stillwell Avenue, and then a Mermaid Avenue bus from the railroad station to West 25th Street. Since the subway station is less than a mile from West 25th Street, children travelling this route do not qualify for the card. This same disqualification also applies to the direct service the Transit Authority will be required to run between the subway station and the new school.⁸

⁸Provisions for direct service from the subway station and for the safety of children who must walk to Mark Twain from the West 25th Street stop on Mermaid Avenue are discussed in the next section. In addition, a further section of the Report discusses the establishment of Coney Island as a single-fare zone.

Exceptions from the Bureau's regulations are permissible where the safety of children is imperiled. Generally, these exceptions are granted only where a physical hazard, such as a road under construction or a bridge under repair is involved. However, we believe that the instant situation warrants an exception. Clearly, the safety of children is involved here; they run at least the same risk of harm from the high-crime conditions on Mermaid Avenue as from a construction or repair site. Indeed, the inception of Daylight Saving Time on a year-round basis heightens the problem, as there are several months during the school year when students travel to school while it is still dark.

g. Safety

It is realized that one of the prime objections that parents have had to sending their children to school in Coney Island is the perception of that area as a high-crime area. This is unfortunately the case with respect to certain parts of Coney Island, particularly among the stores and boarding houses on Mermaid Avenue. However, the perception does not hold true for Neptune Avenue, between West 23d and West 25th Streets, which is the area directly in front of Mark Twain where students come and go. According to police statistics, this area has among the lowest crime rates in Coney Island, and compares favorably with the incidence of crime in the areas directly in front of the other CSD 21

middle schools.⁹

Crime	Mark Twain Area		I.S. 96 Area		J.H.S. 228 Area		J.H.S. 281 Area		J.H.S. 43 Area		I.S. 303 Area	
	Jan-Apr.		Jan-Apr.		Jan-Apr.		Jan-Apr.		Jan-Apr.		Jan-Apr.	
	'73	'74	'73	'74	'73	'74	'73	'74	'73	'74	'73	'74
Rape	0	0	0	0	0	0	0	0	0	0	0	0
Felonious Assault	3	1	0	0	0	2	1	0	0	0	0	0
Robbery	6	1	2	2	2	1	0	0	0	0	0	2
Burglary	7	3	9	2	2	0	3	1	0	0	1	0
Grand Larceny--Purse	0	0	2	0	2	0	0	0	0	0	0	0
Grand Larceny--Auto	3	1	5	2	1	2	4	2	2	0	0	0
Murder	0	1	0	0	0	0	0	0	0	0	0	0

Moreover, the building's location adds to the prospect for creating a more secure environment for the new school. The school grounds are largely insulated from the surrounding community. The grounds are bounded on the north by the bay;

⁹This table compares the incidence of certain crimes on Neptune Avenue between West 23d and West 25th Streets (the "Mark Twain Area") with the incidence of such crimes in the areas directly in front of the other CSD 21 middle schools.

on the west by the Kaiser Playground; on the east by a fenced-in lot; and on the south by Neptune Avenue, a broad major thoroughfare. Furthermore, considerable well-lit commercial and moderate-income residential redevelopment is planned for the area across Neptune Avenue from the school. In addition, within and around the school building itself, considerable effort would be made to insure the safety of the students.

The School Board must seek to allay, however, the fears of parents whose children would go to or from the school outside of regular hours, as well as the fear of any parents who would wish themselves to visit the new school. This is particularly important in view of the fact that the area around the West 25th Street stop on the Mermaid bus route is among the higher crime areas in Coney Island. To this end, it is recommended that during these hours (see, for example, the police schedule below) the Board of Education provide frequent shuttle bus service back and forth between the new school and the #64 bus terminal at the corner of Stillwell and Mermaid Avenues, which is also near the Coney Island stop for a number of subway lines. It is also recommended that the Transit Authority be directed to change the routes of any one or more of the ## 36, 64 or 74 bus lines so as to include a run on Neptune Avenue past the new school from the terminal area.

The 60th Police Precinct should be required to provide the specialized attention to the safety of children coming to and leaving the new school proposed in its submission to the Court. The Precinct's proposal provides for the following:

(i) Concentrated coverage by a Radio Motor Patrol Car will be provided to the perimeter of the school building, with particular attention being given to the front where students and school personnel will arrive and depart. This coverage will be in effect for the period between one-half hour before the opening of school to one-half hour after the departure of all students, including those attending after-hours, extra-curricular activities.

(ii) Concentrated coverage by a Radio Motor Patrol Car or Scooter Police Officer will be provided, from one-half hour prior to the start of classes to one-half hour after the start of classes, and then again from one-half hour prior to dismissal to one-half hour after the close of all school activities, to the West 25th Street stops on the Surf and Mermaid Avenues bus routes and to West 25th Street between Surf and Neptune Avenues. Such coverage will also be provided on Neptune Avenue to the route of the shuttle buses referred to above.

h. The Role of Parents

There should be considerable parent involvement with the new school. Parents from each of the ethnic communities represented should be included on the steering committee for the new school, discussed below. Once the new school has commenced, there should be a parent's committee, open to any parent who wishes to participate, to provide input on administrative and policy matters. In addition, there should be regular open meetings at which the progress of the school is discussed and grievances can be aired, and frequent individual consultation should be held between teachers and parents. In the Flynn and Trotter schools and in John Dewey there are active parents' associations, and officials of those schools have attested to the value of these associations.

i. Recruitment

An active, intensive and informative recruitment policy is crucial to the success of the new school. Officials of the Flynn and Trotter schools stressed that the initial successes in attracting white students to their respective schools were due for the most part to their informing the white community of the advantages of the

schools. Failure to advertise was the principal reason for the inability of Mark Twain's Educational Alternative program to attract additional funds or to stimulate interest in other areas of the District.

Strong consideration should be given to the retention of an advertising or public relations firm to orchestrate the recruitment effort. Such an organization would be able to create and coordinate an attractive, far-reaching and informative program for the recruitment of children for the new school. In any event, however, the recruitment campaign should involve at least the following:

(i) There should be an extensive mailing, or series of mailings of brochures to parents of eligible children. Flynn and Trotter school officials cited their mailings as the single most important part of their recruitment campaigns. The brochures should explain the goals and components of the program to be offered at the new school, and why these goals and programs are advantageous. It is particularly important that the brochures stress the differences between the programs at the new school and those at the other middle schools. The brochures should contain reply cards giving parents a chance to opt for the new school at an early point in time. Brochures should also be designed for and mailed to parents, ethnic, civil, religious and labor groups within the District.

(ii) Commencing early in the 1974-75 school year, an extensive campaign should be waged to stimulate interest in the new school among the District's sixth graders. Teachers and staff personnel should actively and positively contribute to this effort. Such a campaign might include presentations and discussions in classrooms and assemblies, and distribution of attractive printed matter explaining the program to be offered. Children should be encouraged to discuss the new school with friends and parents.

(iii) Extensive use should be made of radio, television and metropolitan and local newspapers. Efforts should be made to keep these media informed as to the progress of the plans for the new school. Advertisements heralding the new school should appear in the CSD 21 local newspapers.

(iv) A select group of school personnel should become well-versed in all aspects of the new school and should meet frequently, in formal and informal sessions, with groups of parents to discuss the plan. Outside speakers, such as officials of the Flynn and Trotter schools, and officials and parents of Dewey, should be invited to these meetings to discuss the benefits of the specialized programs.

2. Populating the New School

The student body of the new school should consist of those youngsters who can best take advantage of the school's educational offerings and teaching methodology.¹⁰ Inter alia, this will include the intellectually gifted, the creatively talented, the budding scientist, mathematician, or language specialist, the athletically endowed, the career-oriented, the child in need of remedial work, and the child for whom individualized instruction and greater self-reliance are well-suited. The school would be open to students residing within the District (some residents attend school in adjoining districts), as well as such children residing without the District, but who are bused in under an open-enrollment program to attend elementary or middle school.

¹⁰ The identification of children in the sixth grade whose parents should definitely consider the program would take place during the 1974-1975 school year. As part of the administrative staff of the new school, there should be a group who would visit the elementary schools during this period to consult with teachers and officials so as to identify children who might be eligible. Of course, parents may seek to enroll their children in the new school even if school officials have not suggested that the child should enroll, but--given the school's experimental nature and the concomitant goal of racial balance, school officials should enjoy wide discretion in selecting a student body.

Consideration should also be given to the idea of letting parents residing outside CSD 21 send their children to the new school to participate in special programs that are not offered elsewhere. For example, the new school's programs for the scientifically gifted child--not matched in other schools--might attract dozens of exceptional youngsters from other parts of Brooklyn. This would create several benefits: it would improve the prospects for racial balance; it would permit the school to strengthen its special programs; and it might increase the availability of funds from the central Board of Education, since borough-wide programs may be less subject to formula limitations with respect to their yearly appropriations.

Opening the new school to youngsters outside the District could serve as a catalyst to the eventual "marriage" of the new school to John Dewey, i.e., the creation of a grades 7 through 12 innovative school, grades 7 through 9 of which attend school in Coney Island. Dewey already accepts some ninth graders who have graduated from parochial school and from other schools ending at the eighth grade, and the new school could be utilized to house these. This concept might help attract students from outside of CSD 21 since Dewey is obligated to accept all CSD 21 students who apply before accepting students from other parts of Brooklyn, and those outside students who elected to go to the new school could be placed in the preferential category.

But, as with John Dewey, students with CSD 21 should receive a first priority for admission to the new school. Moreover, within CSD 21, students from Coney Island should be at the head of the list, so long as such preferences do not override the goal of a racially balanced student body.

The goal of the new school should be to attract, for the school year commencing in September of 1975, at least 350 students of seventh-grade age. In each of the two succeeding years, the school will add a new seventh grade of not fewer than 400 students, so that by the 1977-1978 school year, when the new school will be a three-year Junior High School, it should have a student body of at least 1050. The number of minority students¹¹ in each such entering class should not vary by more than 10 percent from the district wide average of all of the minority pupils in the middle schools. This would mean that the student body that enters in September of 1975 will have approximately 250 white children and 100 minority children.

The Special Master believes that the School Board's proposal of building up the student body of the new school over a three-year period, as described above, is preferable to commencing operation of a full new school in one school year. First and foremost, the plan must be realistic. It must be realized that even considering the benefits of the

¹¹As used in this section of the Report, the term "minority" means Black, Puerto Rican, other Hispanic, Oriental and American Indian students.

specialized education which will be offered at the new school, it would be difficult, given the emotionality of the situation, to attract 1050 students all at once. And even if the number could be obtained, under the target figures, this would cause a sudden drop of 600 to 700 white children in the other middle schools, which could very well heighten racial tensions at those schools. The gradual formation of a school that will succeed is preferable to the failure of a lofty ideal and the backlash of that failure. If the school is educationally attractive, and if the children and the parents of the children who attend during the 1975-1976 school year find their faith in the school rewarded, the school's future success will be assured.

Also, we must consider the innovative nature of the new school. The first year or two of operations must of necessity entail much experimentation. Trial and occasional error will be the result. A smaller student body will be easier to work with during this formative period and will lessen the impact of any educational concepts that do not prove beneficial. The staff should be allowed to develop the school's program at a pace that does not push them beyond their means. We can gain instructions from the experience of the John Dewey High School, which gained full growth one year at a time.

Some will argue that the target figures, even if realized, represent an under-utilization of the school. Based on the 1972 rated capacity of 1745 of Mark Twain, a student body of 1050 would represent a utilization figure of 60 percent. However, this is deemed a minimal, and even illusory, problem. Firstly, the rated capacity of a school is a somewhat exaggerated figure. It takes into account not only the number of classroom seats, but a factor for common rooms, such as gymnasiums, shops and lunchrooms, as well. In addition, and most important, as has been emphasized by Messrs. Bartelo Peluso, District Superintendant, and Sol Levine, Principal of John Dewey, a school offering an experimental program must, of necessity, have a lower utilization than a school offering a standard program. A flexible program of this type requires that some rooms, now occupied all day by classes, will have to be converted to non-classroom use, such as for resource centers for independent and advanced study and remedial work, and for the housing of specialized projects. In addition, many of the classes themselves will be smaller, and there will have to be more classrooms due to the wide variety of courses offered. No quantitative factor can be formulated at this point as to what the rated utilization of the new school should be, given the nature of its program; however, a student body of 1050 is definitely well within the range of what this school should contain on an

innovative basis; the children will not be rattling around within its walls. Special steps must be taken, however, to guarantee adequate supervision and security within the building.

It is expected that the specialized, enriched program to be offered at the new school will induce sufficient numbers of parents to send their children there to meet the target figures for the opening and subsequent classes. We believe that it should be possible to attract at least 25 percent of those children eligible for SP and SPE classes. It is expected that in September, 1975, there will be approximately 550 white students so eligible;¹² therefore, if this percentage as to the intellectually gifted were achieved, less than 125 white children falling in the several other categories would need to enroll in the school for the 1975-1976 academic year to realize the first year's goal of racial balance. This would be approximately one white student out of ten (125 of 1200) not qualified for the

¹²This calculation was arrived at as follows: At present, there are 3050 seventh grade pupils, 650 of whom (21%) are in the SP and SPE. In September, 1975, there will be 2850 seventh grade students (2700 present fifth graders, plus 150 new children from new housing being built). If 21% of them were SP and SPE, there would be 600 such students. Presently, 90% of all first year SP and SPE students are white, and 90% of 600 is 550.

SP and SPE programs.¹³

Identification of the potential student body of the new school should be completed by January 1, 1975. Once identification has been completed, parents of potential students should be met with, on a basis which is as individualized as possible, and all aspects of the plan for the new school should be discussed with them.

Thereafter, the School Board should require that parents of the potential student body indicate, by March 15, 1975, whether or not they plan to enroll their children in the new school for the school year commencing September 1, 1975. If the School Board believes, on the basis of this response, that the new school can meet its integration goals as of September, 1975, all parents within the District should be notified at once that the plan will be effective. In order to insure, however, that normal attrition (e.g., move-aways) between March 15 and September 1 does not

¹³ No present figures are available as to the numbers of children who are gifted and talented in other than an SP-sense. Mr. Bartelo Peluso, District Superintendent and formerly principal of J.H.S. 43, stated that fully one-third of the students at that school are enrolled in special music and art programs. This does not include children with talents in drama, the dance and athletics. Of course not all of these children would be enrolled at the new school; however, the point is made that there are significant numbers of children who would benefit from the diversity of artistic opportunities proposed here, and it is not unreasonable to expect that the parents of at least some of them would opt for the specialized program at the new school. Similarly, there are doubtless many white children who would benefit from the career-oriented and remedial aspects of the new school.

reduce the size of the student body or its racial balance below acceptable levels, the Board should not declare the plan effective unless a minimum of 400 children, racially balanced, have been enrolled, and the Board should continue to accept later registrations, on a reserve basis, even after the desired enrollment has been reached. If on March 15, 1975, the responses fall short of the target figures, the School Board should be given an additional 30 days to make up the deficiency. Additional meetings might be held with parents who rejected the new school in an effort to convince them to reconsider. Also, as noted above, the possibility of attracting limited numbers of children from without CSD 21 should be explored. Such a possibility needs approval from the New York City Board of Education, and might engender resistance from neighboring school districts faced with the possibilities of losing some of their own talented students. However, thought should be given to the idea that during the identification period, a reserve pool of such outside students would be assembled, to be drawn on if target figures within CSD 21 were not reached.

If by April 15, 1975, the target figures are not reached, the Court has no choice but to order other means to end the racial imbalance at Mark Twain.

The Special Master believes that the "back-up" plan, to be used in the event that the new school concept does not attract sufficient numbers of white children to effectuate the desegregation of Mark Twain (we assume that enough minority children will be attracted) should be a plan derived from the so-called "Model II" proposed by Dr. Dodson. Under this plan (discussed in greater detail below) the feeder patterns of J.H.S.'s 228, 239 (Mark Twain) and 281 and I.S.'s 96 and 303 would be reorganized so as to achieve approximately a 70-30 white-minority balance in these schools (J.H.S. 43 is now at 70-30). The heart of the plan is to increase white enrollment at Mark Twain by sending there approximately 700 students who would otherwise have attended J.H.S.'s 228 and 281.

The above procedure would, of course, be repeated for each subsequent school year. Failure to achieve target figures for any school year would necessitate the implementation of the same, or a similarly harsh, back-up plan.

The Special Master believes that parents of children attending the new school should have the right to have their child returned to the child's regularly zoned school for any reason at any time after three months after the commencement of the school year. This flexibility may induce

borderline parents to send their children to the school, knowing that if their fears materialize, the child may be withdrawn. The three-month period is designed to insure that if enough parents initially choose the new school, the school will have a decent chance to prove its worth.

3. Redistricting of Middle Schools

The conversion of Mark Twain into the new school will involve the transfer of both white and minority students from their regularly-zoned schools. White students will be transferred from outside of Coney Island to the new school, and the largely minority student body of Mark Twain will, to the extent they do not attend the new school, be dispersed among the other CSD 21 middle schools. This will create a racial balance in all of the CSD 21 middle schools which approximates the District-wide racial balance.

The changes in the feeder pattern of certain of the District's schools necessary to effectuate the foregoing as of the start of the 1975-76 school year are as follows:

(i) 1/6 of the graduating class of P.S. 188 (19 children) will attend 7th grade at P.S. 99. The 7th grade at P.S. 99 will then be 71½ white.

(ii) 1/6 of the graduating class of P.S. 188 (19 children) will attend 7th grade at P.S. 238. The 7th grade at P.S. 238 will then be 75½ white.

(iii) 1/3 of what would have been the 8th grade at J.H.S. 239 (92 children) will attend 8th grade at I.S. 96. The 8th grade at I.S. 96 will then be 71% white. In addition, the entire graduating class of P.S. 329 (110 children) will attend 7th grade at I.S. 96. The 7th grade at I.S. 96 will then be 71% white.

(iv) 1/3 of what would have been the 8th grade at J.H.S. 239 (92 children) will attend 8th grade at J.H.S. 228. The 8th grade at J.H.S. 228 will then be 69% white. In addition, the entire graduating class of P.S. 288 (75 children), as well as 60 children graduating from P.S.'s 80¹⁴, 90 and 100, will attend 7th grade at J.H.S. 228. The 7th grade at J.H.S. 228 will then be 64% white.

(v) 1/3 of what would have been the 8th grade at J.H.S. 239 (92 children) will attend 8th grade at J.H.S. 281. The 7th and 8th grades at J.H.S. 281 will then both be 69% white.

(vi) The remainder of the graduating class of I.S. 80 (100 children) will attend 7th grade at I.S. 303. The 7th grade at I.S. 303 will then be 66% white.

(vii) 2/3 of the graduating class of P.S. 188 (76 children) will attend 7th grade at J.H.S. 43. The 7th grade at J.H.S. 43 will then be 69% white.

¹⁴P.S. 80 will become a K-6 school during the 1974-75 school year.

(viii) What would have been the 9th grade at J.H.S. 239 will be graduated into high school.

Of course, to the extent that any of the foregoing children who will be entering 7th grade attend the new school, the numbers in the receiving schools will be decreased. These decreases will cause increases in the percentages of whites at the receiving schools.

Plaintiffs have urged, in lieu of the creation of the new school and the implementation of the foregoing feeder pattern, that the CSD 21 schools be redistricted in accordance with the so-called "Model II" proposed by Dr. Dodson. The Model proposes to create an ethnic balance in the middle schools whereby the percentage of black and Puerto Rican students in each school varies by not more than 5 percent from the district-wide average of black and Puerto Rican students, and also seeks nearly to equalize the utilization of each school. Under the Model, the following would occur:

(i) 72 Puerto Rican students would be added to I.S. 96 from I.S. 303 and J.H.S. 239, and 310 white students would be rezoned from I.S. 96 to J.H.S. 281.

(ii) 577 white students would be rezoned from J.H.S. 281 to J.H.S. 239.

(iii) 238 white students would be rezoned from J.H.S. 228, 128 to I.S. 303, and 110 to J.H.S. 239. In addition, 70 Puerto Rican students would be rezoned from I.S. 303 to J.H.S. 228.

(iv) 57 black and 51 Puerto Rican students would be rezoned out of J.H.S. 239.

By Dr. Dodson's own admission, the Model was "devised without data on attendance zones, proposed building plans for residential housing and without the data on long range trends of ethnic blend within the district." In addition, the Model does not set up any feeder patterns, and suggests that certain details be "handled administratively." Accordingly, the Special Master believes that Model II in its present form does not present an adequate mechanical basis for the desegregation of Mark Twain. In addition, for the reasons discussed in greater detail below, the Special Master rejects the wide-ranging busing inherent in Model II as the primary mode of desegregation.

However, as stated above, it may become necessary to adopt a busing plan in the event that the new school does not attract sufficient numbers of students to declare the plan effective. For that reason, it is recommended that the District promptly undertake the preparation of a plan of redistricting and busing, derived from Model II or an

equivalent, which would carry out, for the 1975-1976 school year, the immediate desegregation of Mark Twain.

Notwithstanding the foregoing limitations, both the proposed new school feeder pattern and Model II achieve compliance with Judge Weinstein's order in that they seek to insure that the student body within Mark Twain does not deviate by more than 10 percent from the District-wide average of minority children in the middle schools. Similarly, both seek to create a like ethnic balance in the other CSD 21 middle schools. They differ only with respect to the number and ethnic composition of the students who must be bused.

The Special Master believes that the busing burden which would be imposed on minority students by the plan for the new school is not disproportionate to the burden which would be imposed by Model II. Given the number of minority children who reside in Coney Island, any desegregation plan must require that increased numbers of these children attend school outside of Coney Island. At present there are 1150 minority children of middle school age residing in Coney Island, one-half of whom attend Mark Twain and one-half of whom attend I.S. 303, located outside of Coney Island. It is expected that by September of 1977 (when the new school will be a full three-year junior high school), there will be 1350 such children

in Coney Island. Under Model II, assuming an 85 percent utilization of Mark Twain (i.e., 1500 students), and also assuming that the District-wide middle school population will then be 35 percent minority, there would be a total of 525 minority students at Mark Twain ($1500 \times 35\%$), and 825 minority students ($1350 - 525$) would have to attend middle school outside of Coney Island. Under the plan for the new school, assuming that only the minimum target figure is reached (i.e., 1050 students), there would be 365 minority children at the new school ($1050 \times 35\%$), and 985 minority children ($1350 - 365$) would have to attend middle school outside of Coney Island. This means that the plan for the new school requires that only 160 more minority children than the number so required by Model II will have to attend middle school outside of Coney Island.¹⁵

To these figures must be contrasted the nearly 600 white students who will have to be transferred from their home areas to the new school. There are those who will argue that this does not compensate for the increased busing of minority students because the white children will have a choice as to whether they will attend the new school. The Special Master believes this argument to be specious. The plain and simple fact is that large numbers of white students will be transferred

¹⁵In the first two years of the new school this number will be higher because there will be no eighth and ninth grades at the new school during the 1975-76 school year and no ninth grade during the 1976-77 school year. In addition, even though Coney Island children will have a first priority for the new school, it is to be expected that not all of the minority children at the new school will be from Coney Island.

to Coney Island, to attend middle school away from their home areas, as part of the desegregation process. Surely, many will elect not to do so; but widespread resistance to the new school carries with it the risk of other, more unpalatable, means of desegregation.

Based on the foregoing, we did not consider the question of busing of minority students to be dispositive of the issues at hand. Nor should it be. Busing of students, both white and minority, is commonplace.

"Busing" has become a code word, too often exploited for the purpose of private, political gain and expediency. Most often, it has been directed towards the white population; given the facts at hand, it is imperative that it not be used to inflame the passions of minority group members to the detriment of the vital principle at stake here.

That principle is school desegregation. It is the thrust of this law suit, the avowed policy of The New York City Board of Education and, indeed, since the Brown v. Board of Education decision, one of the major tenets of our system of government. The only real question is how it best can be achieved.

Some observations by the Chancellor will help to put the problem in context:

"Those factors which are beyond the control of the school system, have had the greatest impact on the programs for school desegregation and the reduction of minority-group isolation in large cities like New York. These factors include segregated housing; unemployment rates, especially among unskilled

workers; growth of the population on welfare; influx of minority group poor from other areas; higher proportion of white and middle class pupils enrolled in non-public schools; and an exodus of white and middle class families to the suburbs" (Chancellor's Report on Programs and Problems Affecting Integration of The New York City Public Schools, Irving Anker, Chancellor, February, 1924, p. 2).

A look at the facts supports these observations. Judge Weinstein found that

"The general pattern is large central city concentrations of minorities surrounded by a ring of generally low income whites, followed by a large suburban ring of generally middle income whites. . . . [B]y 1968, the trend in Coney Island had become pronounced. In the metropolitan area generally, there has been since 1968 a continuing decrease in white population in the city and an increase in white population in the suburban areas" (Opinion, p. 6).

The school population is reflective of this trend. Within New York City as a whole, between 1957 and 1973, the percentage of white children in the public schools declined from 68 percent to 34 percent¹⁶ (Chancellor's Report, op. cit., p. 13). Within Brooklyn during this period, the change was from 70 percent to 32 percent, with the white population being in the minority since 1966 (id., pp. 13-14).

Within CSD 21, the trends are not so pronounced, but similar erosions are taking place. Between the 1963-64 and 1973-74 school years, total enrollment has dropped from a high in 1966-67 of 30,500 to 26,100; white enrollment has dropped

¹⁶ The total public school population within New York City is also dropping. Between the 1972-73 and 73-74 school years, the City lost a total of 25,000 pupils (5,000 Puerto Rican, 3,500 black and 18,500 white, with only the number of American Indian and Oriental pupils showing an increase).

from a high in 1966-67 of 26,000 to 17,750; percentage of white students has dropped from a high in 1963-64 of 89 percent to 65 percent; and the total number of minority students has risen from 3000 to 8350. Since the 1970-71 school year, the percentage of whites has been declining by more than 2 percent per year.

Enrollment in private schools significantly affects the problem of school desegregation. According to the Chancellor,

"[a] recent study shows that about a quarter of New York City's total population attends non-public schools, yet those schools enroll nearly half of the total 'others' (i.e., white) pupil population in the City. Conversely, the public schools enroll nearly three quarters of the City's pupil population, including 90 percent of the minority group pupils" (Chancellor's Report, op. cit., p. 14).

This pattern is similar, though on a smaller scale, within CSD 21. The Catholic schools within the District (grades K-8) presently enroll 4,800 students, more than 95 percent of whom are white; Jewish schools (grades K-8) presently enroll 7200 students, all of whom are white.¹⁷ Presumably, not all children enrolled in these schools reside within CSD 21; but there are doubtless children who live within the District and attend private schools elsewhere.

It is within this context, of increasing numbers of minority children in the public schools, and of white flight, from the City as a whole, and within the City from the public

¹⁷Information supplied by Catholic Schools, Diocese of Brooklyn, United Synagogue of America and the National Society for Hebrew Day Schools.

schools, that the desegregation of Mark Twain must be considered. While a too-rapid change in the ethnic composition of the District's schools would not be the only factor to cause an acceleration of white flight, the importance of the schools as a determinative of where people choose to live spotlights the need for sensitivity in the desegregation process.

At present, the schools in the District outside Coney Island are absorbing minority students in a manner and at a rate the District has accepted and which thus far has not produced any serious confrontations in those schools.¹⁸ Nearly 2000 minority students are bused under the open enrollment program from Bedford Stuyvesant, and within the District nearly 600 minority children are bused to I.S. 303.

It is inescapable that both the number and the percentage of minority students will increase within the foreseeable future, not impossibly, to some irretrievable "tipping point"¹⁹ beyond which the ethnic composition of the District's schools will

¹⁸ Presently, 32 percent of the District's school population is minority. Outside of Coney Island (i.e., excluding P.S.'s 80, 90, 188 and 288 and Mark Twain), the minority students make up 23 percent of the school population. Of the 24 schools outside of Coney Island, 3 are 40 percent or more minority, 4 are 30 percent or more minority, and 7 are 20 percent or more minority, with the rest being between 7 percent and 18 percent minority.

¹⁹ The "tipping point" is an unspecified percentage of concentration of minority residents in a given area that will cause white residents to flee. It has been legally recognized as a factor to be considered where avoidance of segregation is at issue (see, e.g., Otero v. New York City Housing Authority 484 F.2d 1122 (1973), where the Second Circuit held that the

cause the trends evident elsewhere in the City to become irresistible. Yet, it is not unreasonable to assume that if school integration can be carried out at a pace which does not cause unmanageable tensions within the District, thus hindering severely the attempts at "refertilization" treated elsewhere in this Report, the tipping point need not be reached. Certainly, anything which accelerates the trend towards a tipping point should be avoided.

The Special Master believes that the adoption, in the first instance, of Model II as a means to desegregate Mark Twain would cause an otherwise-avoidable increase of ethnic tensions, which would increase white flight from the District and its schools and ultimately hinder the desegregation process. There is much sentiment within the District reflective of the anti-busing measures recently adopted by the House of Representatives. The Master's discussions with school officials and parents' groups have indicated that the abrupt, institution of forced busing of nearly 700 white children into Mark Twain would engender massive resistance among parents of those children. Similarly, even if such busing could be effectuated, the concomitant abrupt drop of white enrollment

Authority may limit the number of its apartments to be made available to minority-group members where it can be shown that such action is essential to promote a racially-balanced community and to avoid concentrated racial pockets that will result in a segregated community.

in the other middle schools would aggravate racial anxieties among parents and children in those schools.²⁰ We believe that if integration within the District and, ultimately, the maintenance of the District as a harmonious, ethnically-balanced population center, are to be achieved, the intense emotions which would be generated by a precipitate forced busing plan must be avoided.

It might be argued that if offending the sensibilities of white parents were always the standard, school integration in this country would have been a dead issue from the start. But this is not the Old South in 1957, where the most draconian efforts were necessary to overcome 100 years of de jure segregation and to bring even miniscule numbers of black children into the schools. This is Brooklyn in 1974, where ethnic surgery of the most delicate order is needed to preserve a fragile social order. The recommendations herein do not shirk the responsibilities of integration; they do provide a reasonable framework within which it can function.

For other reasons, too, we believe that the plan for the new school is preferable to Model II. First, of course, is the nature of the new school itself. Model II, even if carried out, makes no provision for any of the educational benefits which, for the reasons set forth above, we believe

²⁰ Under Model II, in one year, the number of white students in I.S. 96 would drop by 23%, the number of white students in J.H.S. 228 would drop by 16% and the number of white students in J.H.S. 281 would drop by 20%.

will flow to the District's children from the varied and innovative nature of the program to be offered at the new school. Second is the question of perception. Judge Weinstein found that "[t]he community and school officials view Mark Twain as a segregated school" (Opinion, p. 30). If meaningful desegregation is to occur, this view must be changed. We submit that the establishment of a new school, with an innovative program and a new name, as opposed to simply transferring large numbers of unwilling children to an existing, unfortunately maligned, school building, is a qualitatively different step in the necessary process of perceptual change.

Unfavorable publicity to the contrary, Mark Twain has been providing a more enriched program than in any other middle school in the district. Monies spent there in reimbursable funds on improving the plight of socially and educationally deprived children is considerably greater than the amount so spent at the other middle schools. It is imperative that the transfers herein do not deprive any child of the benefit to which he or she would have been entitled had the transfers not been necessitated. To the extent that these funds continue to be available they and the programs they implement must follow the children to the transferee schools. To the extent funds are cut back by the various Federal and State agencies, they should be made up by the Board of Education and from within the CSD 21 budget. In this same vein, as suggested

by the School Board (see Zelon, op. cit., pp. 343-344) a District-wide administrator should be utilized to oversee the transfer of funds and programs to the other schools.

4. Curtailment of Alternatives

In its submission to the Court the School Board has stated that children wanting to attend SP (and SPE) programs would have to enroll at the new school, since these programs would be phased out at the other middle schools. The Board reasoned that few parents would elect the new school if their children could receive an equivalent program without leaving their neighborhood.

The Special Master wishes that the Board were wrong. So, too, does the Board. Ideally, if it were possible to achieve a sufficient student body at the new school without eliminating the SP programs elsewhere, Mark Twain would become integrated with far less resentment, which, itself, would hasten the school's ultimate acceptance within the community. The Special Master has talked to many persons within the District about the possibility of keeping open the SP programs. They have generally agreed that they, too, would like it, but no one has said that the short-term prospects for the new school would benefit from the competition with the SP programs and most have conceded that they share the School Board's pessimism.

Since we believe it imperative that the Special School be given every advantage for success, we recommend reluctantly that the SP phase-out, as described in the footnote below,²¹ be scheduled to begin in September, 1975. The School Board should be permitted at any time, however, to petition the Court for a modification of the plan which would partly or entirely restore the SP and/or SPE programs. As part of such petition, the School Board should present convincing proof that such restoration could be achieved without impairing the success of the new school.

The argument might also be made that if many of the District's most gifted and talented children attend the new school, this would debilitate the other middle schools. Of

²¹Under this proposal, there would be no seventh grade SP and SPE programs in the other middle schools during the 1975-1976 school year, no seventh and eighth grade SP and SPE programs in the other schools during the 1976-1977 school year, and no such programs at all in the other schools during the 1977-1978 school year and thereafter. (Of course, eighth and ninth grade SP and SPE programs during 1975-1976 and ninth grade SP and SPE programs during 1976-1977 would remain in effect.) The practical effect of this plan would be that a 2-year middle school program (i.e., the SP) would be offered only at the new school. Other than the loss of prestige value, the phasing out of the SPE program would have little significant value since all of the courses for which SPE students would be eligible will be continued at the other middle schools. It is not expected that the retention of such courses will significantly cripple the effects of the plan since nearly 80 percent of all first-year SP and SPE children in the District are in the 2-year SP.

course, not all such students will attend the new school. But even if significant numbers of them do attend, there would be no decrease in the efficiency of the other middle schools. Removal of gifted and talented children may in fact give others a chance better to develop their own potential. For example, two of CSD 21's schools which have middle-school-age children, P.S.'s 99 and 238 (which are kindergarten-through-grade-eight), presently operate without SP and SPE programs. In those schools, children who are eligible for such programs leave after the sixth grade to attend seventh through ninth grades at a middle school offering the programs. Testimony has been given to the effect that this scheme does not in any way affect the education of the students who remain in these two schools (Zelon, op. cit., p. 342); nor should it.

5. Supportive Services

Involved in the implementation of this plan, and particularly in its early years, are several potentially traumatic factors: minority children attending predominantly white schools for the first time; white children attending school in a largely minority community for the first time; and the lawsuit and federal court order that have brought these changes about. Patience, understanding, and respect for the views of others will ease the transition. Further concrete steps might also be explored:

(i) Commencing September 1974, all schools within the District might start a program on racial relations that would explore the nature of prejudice and the contributions of minorities to society. The program should openly deal with the coming ethnic changes within the District's middle schools. A similar program might also be run for parents.

(ii) Commencing during the 1974-1975 school year, each middle school within the District might engage a full-time human relations aide, hired from among the minority community. This aide would act as a representative and confidant for minority students within the school.

(iii) There might be a summer workshop prior to September, 1975, to orient students entering the new school and their parents as to the educational system to be offered there.

(iv) The School Board should call on groups and agencies experienced in resolving intergroup conflicts for advice in preparing the community for the transition. Such organizations include the New York City Commission on Human Rights, the Community Relations Service of the United States Department of Justice, the American Jewish Committee, and the Institute of Mediation and Conflict Resolution.

6. A New School, A New Name

The new school deserves a name of its own. Were he alive, Mark Twain, nee Samuel Clemens, would certainly agree. The name "Mark Twain" is linked too closely with the controversy caused by this suit and with the image of the segregated, underachieving school which led to the suit.

Even if Mark Twain were free of these associations, a new name for the new school would seem appropriate. Each generation has its heroes to whom youngsters of the age relate (see, e.g., John Glenn, Edward R. Murrow). There is no reason why children who attend the new school should not feel closely connected to the man or woman whom the school honors.

We also suggest that youngsters eligible to attend the new school when it opens in September, 1975, that is, current sixth graders in District 21 help to select the new name. That role might heighten their interest in and backing for the school. Once selected, the name should be used exclusively in all references, communications, and advertisements with respect to the school.

7. Supervisory Committee

The implementation of the new school will be a formidable task, and cannot and should not involve the piecemeal efforts of a number of people unable to devote their concentrated efforts. Accordingly, it is recommended that a supervisory

committee be formed as soon as possible having ultimate responsibility for the school plan. The committee should contain at least the District superintendent, the principal of the new school, a member of the School Board, one or more teachers and middle school administrators, representatives of the central Board of Education, the United Federation of Teachers and the Council of Supervisory Associations, and parents representative of each of the several ethnic groups. The committee should call upon the resources of the faculty of John Dewey High School and the Department of Education at Brooklyn College, and should meet at regular intervals to formulate policy for the new school within the constraints of the Court's order.

The committee should engage at least one full-time person to implement the policies set by the committee. This person, working closely with the principal and staff of the new school, would work out the details of curriculum, staffing, teaching methods, fund development, transportation, recruitment, and other matters suggested by the committee, subject of course to the final say of the committee.

The committee and its staff should regularly inform the prospective staff of the new school, as well as the District community as a whole, as to its progress in formulating the new school. There should be a frequent newsletter to prospective parents, keeping them abreast of the innovative

programs to be offered at the new school. There should also be regular open meetings with prospective staff and parents where all aspects of the new school can be aired and discussed.

The work of the committee and staff would not end with the opening of the new school, as during the formative years at least, constant guidance and policy revision will be needed.

9. Timetable

The implementation of the new school is a complicated task, requiring careful supervision and coordination. It must be carried forward with precision and must embody the principles of this Report. Accordingly, it is recommended that such implementation progress in accordance with the following timetable, and that the Board notify the Court as to the steps it has taken to comply with this schedule within five days after each of the dates shown.

By August 1, 1974: The supervisory committee should be formed.

September, 1974: Start of school. Sixth graders should be made aware of the new school.

By October 1, 1974: Programs on racial relations should begin. The full-time staff member of the

supervisory committee should begin his or her task. Negotiations with the teacher's union should be commenced and carried forward to resolution.

By November 1, 1974: Identification of the potential student body should begin. The process of formulating a curriculum, budget and staff should be well underway. Proposals should be sent to sources of supplemental funding. Details of the back-up plan based on Model II should be complete. The first mailing of brochures to parents and community groups should be made, and a media campaign and meetings with parents and community groups should be ongoing. Sixth graders should be receiving detailed information on the new school.

By January 1, 1975: Identification of the potential student body should be completed and children and their parents notified. Curriculum, budget, staff and transportation plans should be nearing completion. Additional mailings should be made, and discussion of the new school among sixth graders and meetings with parents and community groups should be stepped up. A contest to select the name of the new school should commence.

By March 15, 1975: Parents will have notified school officials of their decisions. If sufficient numbers of children are attracted to declare the new school effective, parents should be so notified, and orientation of children and parents should begin. If not, the 30-day additional recruitment period will begin. Parents should again be notified. Curriculum, staff, budget and transportation plans should be complete.

By April 15, 1975: If, after the additional recruitment period, the plan can be declared effective, the District should be so notified and orientation of children and parents should begin. If not, the District must be notified as to the implementation of the back-up plan.

September, 1975: Start of School.

Every two months thereafter: Progress reports should be made to the District and the Court.

9. The Reorganization of I.S. 303 into a Junior High School

It became apparent to the Special Master, shortly after he began his assignment, that a serious situation existed at I.S. 303. Because of the influx of minority youngsters from Coney Island, who could not attend Mark Twain without further deepening the racial imbalance there, I.S. 303 was itself fast reaching the point beyond which integration becomes an empty ideal. Projected registration figures for September, 1974, showed a decline in the percentage of white students from 57 to 53, with an even sharper decline projected for September, 1975, absent remedial action by the Court. White parents living in the I.S. 303 feeder pattern were withdrawing their children from the public schools in panicked reaction. For those who could remember the pattern at Mark Twain four or five years ago, it was déjà vu.

Responding to this urgency, the School Board decided to act at once. It considered several plans to stabilize the racial balance at I.S. 303 and discussed them with the Special Master. Through this joint consultation, both parties agreed that the following plan, if implemented in September, 1974, would improve conditions at I.S. 303 and would also further the plan for integrating Mark Twain that the Special Master was intending to recommend to the Court:

(i) Intermediate School 303 would be reorganized as a junior high school.

(ii) Fifth grade students at P.S. 90 and 100, who would otherwise enter 303 in September, 1974, would stay at their present schools for another year.

(iii) Sixth grade students at P.S. 216, who would otherwise enter J.H.S. 223 in September, 1974, would go to 303 instead. Henceforth, P.S. 216 would become part of the feeder pattern for J.H.S. 303.

Taken together, these changes would shift the racial balance at 303 in September, 1974, from the projected 53 percent "Others" to nearly 62 percent.

Since the creation of new junior high schools violates a long-standing policy of the central Board of Education, the School Board needed a variance from that policy. To that end, the Special Master cooperated closely with the School Board, joining it at two meetings with Chancellor Anker and also at a hearing before the central Board of Education. At those sessions, the Special Master gave both his oral and written support to the proposed change, indicating--for reasons to be stated below--that the Board's plan would reinforce the effort to desegregate Mark Twain, and that he intended to recommend to the Court, as part of

the remedy in this lawsuit, that 303 be continued after 1974 as a junior high school.

On June 14, 1974, Chancellor Anker advised District 21 that it could immediately reorganize I.S. 303 for the 1974-1975 school year. Because the current school year had almost ended, eighth graders at I.S. 303, who were scheduled to graduate, were allowed to do so. As a result, for the 1974-1975 school year only, 303 will operate without a ninth grade. Thereafter, if the Court accepts the Special Master's recommendations, 303 will become a three-year junior high school.

The reorganization of 303 will benefit the overall plan to desegregate Mark Twain in several important ways. With the conversion of P.S. 90 and P.S. 100 into K-6 schools, all but one of the District's elementary schools (P.S. 121) that feed all their graduates into a middle school within District 21 will now have the same K-6 cycle. Since the new school is one of the five remaining middle schools in the District will now have a 7th to 9th grade cycle, it becomes simpler to implement the plan to achieve racial balance within the entire District at the middle school level. Also, in the critical first year of the plan, when the percentage of eligible students who choose the new school may be lower than in future years, converting P.S. 90 and P.S. 100 into K-6 schools in September, 1974, will add 350 to the pool of beginning middle school students who could

elect to attend the new school. Moreover, these students live only a short distance from Mark Twain, so that travel will be less of a factor in their decision about the new school than it would be for students in the northern part of the District.

Finally, any immediate change in feeder patterns that encourages white families to stay in the District and to continue sending their children to the public schools must ultimately benefit integrated education, for which the plaintiffs have sued. With this in mind, both the Special Master and the School Board agreed that I.S. 303 families needed assurance that the mistakes of Mark Twain were not to be repeated. The Board's assurance came in word and action.

The plaintiffs have argued that the reorganization of 303 in September, 1974, demonstrates that integration of 239 need not be deferred until September, 1975. No argument so badly misses the mark. The difference in the order of magnitude between reorganizing 303 and integrating 239 is as alpha is to omega. 303 involved only one change in feeder pattern (P.S. 216), and even there, many P.S. 216 graduates will face less travel attending J.H.S. 303 than the former pattern would have entailed. The complexity and difficulty of integrating Mark Twain fill this Report.

When the reorganization of I.S. 303 was on the agenda, the Special Master met with the Principal of P.S. 216, Mr. Benjamin Messinger, and with several officers of the school's parents' association. Following this discussion, we retraced the route that many P.S. 216 graduates would walk on their way to and from J.H.S. 303. The Special Master agreed that several basic safety measures were needed prior to the beginning of the 1974-75 school year to insure the safety of these students, and that he would recommend appropriate action to the Court. The measures follow:

1. Crossing guards and traffic lights, as necessary, should be installed where Ocean Avenue crosses the entrance and exit ramps of the Shore Parkway and its service roads.
2. Sidewalks should be installed, where lacking, along the east side of Shell Road between Avenue X and the Shore Parkway. Garbage dumping along this stretch should be banned.
3. Study of the feasibility of a pedestrian overpass across the Shore Parkway in the vicinity of J.H.S. 303 should begin at once.

10. The Elementary Schools

The high concentration of minority students in the elementary schools in Coney Island (P.S.'s 30, 188, 288, 329 and, to a lesser extent, 90) may very well inhibit the "refertilization" of Coney Island being treated by the remainder of the Report. In his opinion, Judge Weinstein cited the testimony of several experts, including Dr. Dodson, to the effect that the decision of white parents whether or not to move into a neighborhood depends in large part on the schools there, and that heavily minority schools will make it difficult to attract such people (Opinion, pp. 57-61).

The Report contains no overall plan for ending racial imbalance in the Coney Island elementary schools. It may be helpful, however, to apply a modified "open enrollment" concept to these schools. Under open enrollment, as defined by the central Board of Education, a school which is 90 percent or more minority qualifies as a "sending" school. Parents of all children attending the sending school are given the choice of several "clusters" of "receiving" schools, some located within the District of the sending school and some without.²² From within the clusters chosen by the parent, the zoning unit of the central Board of Education makes a determination, based on the availability

²² The criteria for receiver schools are that they must have less than 100% utilization and must be at least 75% white. Receiver schools generally accept children from more than one sender; i.e., receivers generally accept children from the entire Borough, on a first-come, first-served basis.

of seats, as to which school the child may attend. The parents may then accept the assigned school or reject it, in which event the child attends the regularly zoned school.

Presently, P.S.'s 80 and 288²³ qualify as sender schools. The 90 percent requirement for a "sending school, modified downward to 75 percent would also qualify P.S. 188 and possibly P.S. 329, as sender schools. Based on parent response at P.S.'s 80 and 288 for September 1974,²⁴ we would not expect that large numbers of children would actually enter this program, but the availability of the option to prospective residents of Coney Island might enhance the attractiveness of the area to some of them. With so much at stake in the renaissance of Coney Island, every reasonable step to further that goal should be taken.

²³ The receivers for these schools are as follows: P.S. 80 sends to P.S.'s 153 (CSD 21), 112, 209 (CSD 21), 238 (CSD 21), 163, 200, 204, 186, 95 (CSD 21) and 215 (CSD 21). P.S. 188 sends to P.S.'s 195, 185, 153 (CSD 21), 101 (CSD 21), 209 (CSD 21), 163, 226 (CSD 21) and 200.

²⁴ In September, 1974, 18 children from P.S. 288 and 4 children from P.S. 80 are now scheduled to attend receiver schools, and these numbers may decrease before the school year begins. Having visited P.S. 288, and met its acting principal, Ms. Margaret Nichols, we are not surprised that most parents at the school would prefer their children to learn there. The building itself is fresh and inviting, and the tone of the school, and Ms. Nichols' innovative, yet pragmatic views about teaching in a predominately non-white school impressed us. We believe that children of all races can flourish there.

The Special Master realizes that the next months will be difficult ones--for the School Board and its staff, as well as for the parents and children of District 21. But along with difficulty comes a challenge. And, by meeting the challenge, the District can demonstrate to persons everywhere how goodwill, patience, and a faith in one's schools can provide both good education and successful integration.